



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

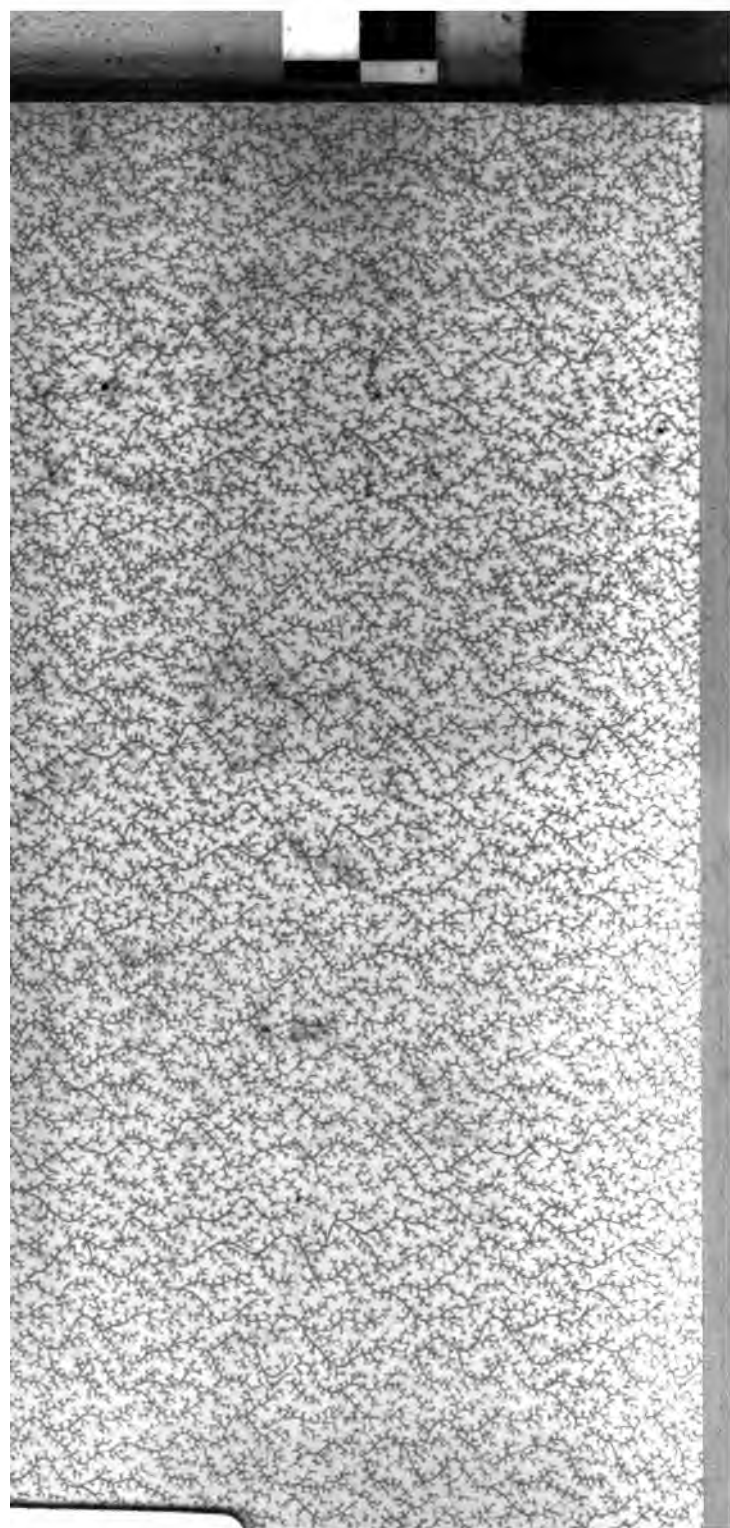
About Google Book Search

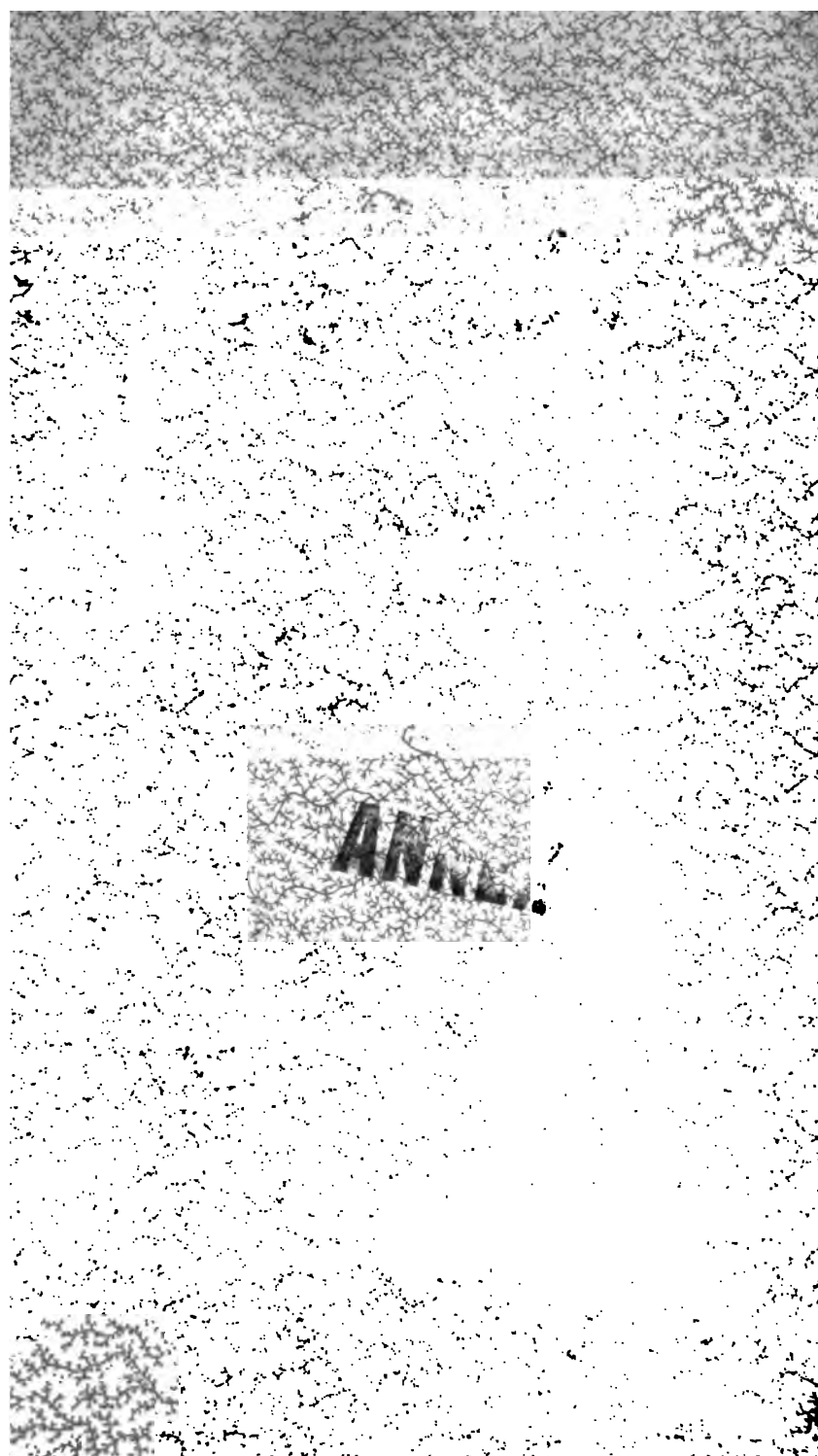
Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

NYPL RESEARCH LIBRARIES

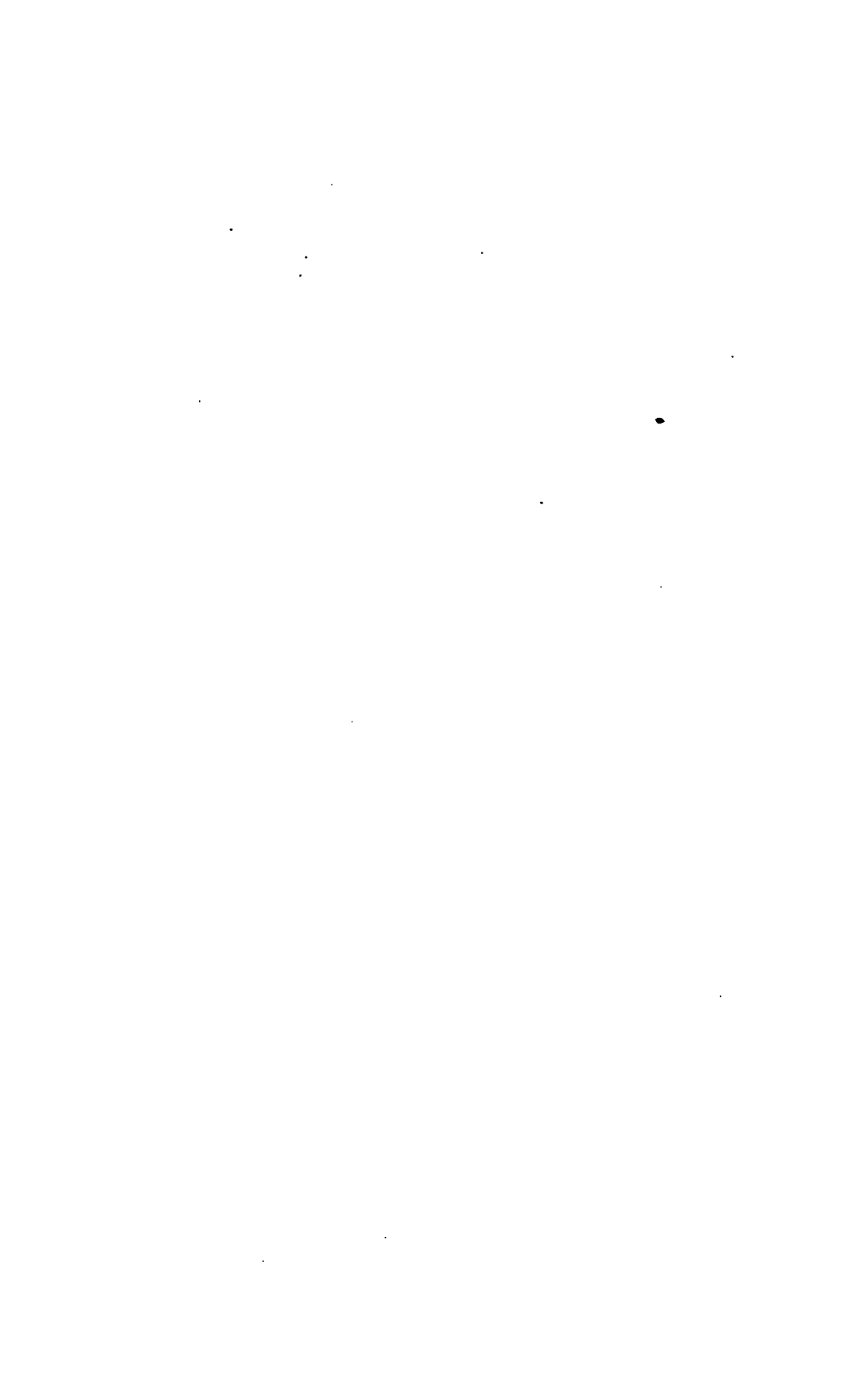


3 3433 06170783 6











AN
ENQUIRY
INTO THE
DUTIES OF MEN.

VOL. I



Y
MEM
11-10-10

AN
ENQUIRY
INTO THE
DUTIES OF MEN

IN THE
HIGHER AND MIDDLE CLASSES OF SOCIETY
IN GREAT BRITAIN,

RESULTING FROM THEIR RESPECTIVE STATIONS,
PROFESSIONS, AND EMPLOYMENTS.

By THOMAS GISBORNE, M. A.

THE FOURTH EDITION, CORRECTED.

IN TWO VOLUMES.

VOL. I.

LONDON:

PRINTED FOR E. AND J. WHITE, FLEET-STREET; AND
CADELL AND DAVIES, STRAND.

1797.

K13

187

18

187

P R E F A C E.

AS the plan pursued in the subsequent work is detailed in the first chapter, it would be superfluous to say any thing concerning it in this place. But there is another point on which the reader may wish for some explanation, before he enters on the perusal of the following pages. He will be aware that it can scarcely fall to the lot of any individual to attain to such a degree of personal knowledge of the habits, pursuits, and occupations of the different ranks and professions into which the higher and middle classes of society in this country are distributed, as to qualify him to delineate their respective duties with tolerable accuracy. And he may with justice expect to be informed whether the author of the present performance has enjoyed advantages of any kind, affording him a chance of accomplishing, in a satisfactory manner, the task which he has undertaken. It is therefore in-

cumbent on me to state that I have enjoyed, in carrying on the work, advantages of such a nature as to leave me almost without apology for the greater part of its errors and imperfections. The endeavours which I have studiously made to derive intelligence from various quarters respecting the several topics which I have had to discuss, have been amply recompensed. And in executing most of the chapters appropriated to particular descriptions of men, and especially some of those chapters with the subjects of which I was the least acquainted, I have been fortunate enough to receive the unre-served suggestions, advice, and animadversions of persons severally occupying the station, or belonging to the profession in question, and accustomed strictly to consider its duties in a conscientious light. Were I at liberty to mention the names to which I allude, some of them would be found in possession of no small share of public respect and esteem.

Yoxall Lodge, near Lichfield,

Nov. 6th, 1794.

C O N T E N T S

OF THE

FIRST VOLUME.

CHAP. I.

Plan of the Work explained.

	PAGE
METHOD proposed - - -	2—4
Reasons for adopting it - - -	5—8

CHAP. II.

General Remarks on the First Principles of the British Constitution.

Tendency of Men to Social Union - - -	9—11
Simplicity of early Forms of Government exemplified	11—15
First General Principle of the British Constitution	17, 18
State of popular Representation considered as to strict Justice - - - - -	19—22
A 4	Hereditary

Fifth General Principle
 Sixth General Principle
 Seventh General Principle
 Why the supreme Magistrate in a Monarchy
 ment should be inviolable
 Eighth General Principle
 Ninth General Principle
 Tenth General Principle
 Eleventh General Principle
 Progressive Improvement of the British Constitu

CHAP. III.

On the Duties of the Sovereign.

Advantages resulting from the Monarchical Branch
 Institution
 Power of the King as to Legislation
 Negative

	PAGE
Duty of the Sovereign as to the Opposers of his Ministers	65, 66
Effects of royal Example on national Morals, Manners, and Institutions	66—70
Duty of the Sovereign as to conferring Titles and Honours	70
As to patronising Arts and Sciences	71, 72
Recapitulation of some Particulars	72, 73
Duties of the Sovereign as to the Education of his Family	74, 75

CHAP. IV.

On the General Duties of Englishmen as Subjects and Fellow Citizens.

Primary Duty of a Subject	76
Limitations of the general Duty of Obedience	77—80
Obedience, how enforced by Christianity	80—83
Allegiance—all Englishmen bound to it	83, 84
Mistaken Opinions as to the Grounds of the Obligation	84—90
Just Ground	90
Oath of Allegiance; who the Imposer—and the Import of the Oath	91—94
Oath of Abjuration	94, 95
A Right retained by the British Nation with respect to the Government	96—99
Another	99—105
The Utility of Government highly depends on its Stability	105
Consequent Duties of British Subjects	105—109
6	Patriotism

CHAP. V.

On the Duties of Peers

Benefits resulting from the Institution of Peers
Failings to which Peers are peculiarly exposed
Station
The preliminary Acquisitions and Attainments
on a Peer
Remarks on the Manner in which young Peers
make their Entrance into Parliamentary Life
Duty of a Peer as to Party
Common Plea for Parties considered
Duty of attending the House, though neither
nor desirous to be
Duties of a Peer as a Legislator
Duties in Debate
Duties as a Judge
Particular Duties incumbent on Peers of particular
Descriptions
Duties of a Peer in Private Life

CHAP. VI

	PAGE
How it gained quiet Admission in Great Britain 173—174	
Leading Purpose of a Representative Assembly stated—	
How consulted, and when it has been abandoned, in	
England - - - - -	175, 176
Benefits of the Representative Institution	176—183
Requisites in a Member of Parliament; and how far dif-	
fering from those of a Peer - - - - -	185—188
Preliminary Considerations incumbent before a Person be-	
comes a Candidate - - - - -	188—191
Duties of a declared Candidate, and during the Election	
	191—197
And when a Contest is ended - - - - -	197, 198
Remarks on purchasing a Seat - - - - -	198—200
Two postponed Questions discussed :	
What Information is due from the Candidate to the Elec-	
tors as to his political Opinions ? - - - - -	201—203
And is a Member of Parliament bound, or should he en-	
gage, to obey Instructions ? - - - - -	203—210
Effects of the Expensiveness of Elections considered	
	210—217
Peculiarities in the Situation of a Member of the House of	
Commons as distinct from that of a Peer ; and conse-	
quent Duties and Temptations - - - - -	217—222

CHAP. VII.

On the Duties of the Executive Officers of Government.

Preliminary Qualifications and Attainments to be sought	
by one who looks up to an Executive Office	223—225
	Duties

	PAGE
Duties as to accepting an Office when offered	225—231
Sinecures	231, 232
Duties of an Executive Officer as to general Principles and Conduct	233—238
As to the Exercise of his Patronage	238—243
As to the Transaction of official Business	243—247
As to the Expenditure of Public Money	247—250
As to bringing forward Public Measures	250—253
As to the Conduct to be observed towards the Crown	253—255
Towards Parliament	255—262
Towards foreign Powers	262—265
As to resigning	265—269
After his Resignation	269—271

CHAP. VIII.

On the Duties of Naval and Military Officers.

Right of Defensive War founded on Reason and Christianity	272—275
Duties of an Officer as to discharging the various Functions of his Station	275—279
As to Public Money and Stores	279, 280
As to Obedience	281—284
As to investigating the Justice of the War	284—290
As to Conduct towards Brother Officers	291—297
And towards private Soldiers and Seamen	297—304
As to encouraging Religion and Morality in those under his Command (with illustrations)	305—313
Duties due to Enemies on the Score of Justice	314—316
Stratagems	

FIRST VOLUME.

xiii

	PAGE
Stratagems considered - -	316—318
Duties due on the Score of Benevolence	318—321
Effect of Christianity on the Conduct of War	321, 322
Duties to Neutral Powers - -	322—324
Duties of an Officer in private Life -	324—327
An Officer still a Citizen - - -	328, 329
Duty of a Member of the Legislature -	329, 330

CHAP. IX.

On the Duties of the Legal Profession.

The Legal Profession vindicated against erroneous Impu- tations - - - -	331—335
What Causes may be undertaken -	335, 336
Illustrations of the foregoing Reasoning	336—339
Requisites for a Barrister as to Study, Knowledge, Oratory, &c. &c. - - - -	339—350
Attornies - - - -	342, 343
Habits and Dispositions to be cultivated, and Temptations guarded against - - - -	350—362
Duties of a Barrister previous to the Cause being brought to Trial - - - -	362—370
Duties during the Trial - - -	371—378
And as to new Trials - - -	378, 379
Reasons why a Barrister should not prematurely go into Parliament - - - -	379—381
Peculiar Duties and Temptations of the parliamentary Lawyer - - - -	381—389
And of the Crown Lawyer - -	389, 390
	Benefits

Benefits of the Legal Profession in forming future	
Judges - - - - -	390—392
And in superintending the Conduct of Judges	392—394
Duties of a Judge relative to a Trial, and its Consequences	395—407
Other General Duties of a Judge -	407—416

CHAP. X.

On the Duties of Justices of the Peace and Municipal Magistrates.

Motives for undertaking the Office of a Justice of the Peace	
scrutinised - - - - -	417—419
Qualifications requisite, and Duties incumbent, in execut-	
ing the Office - - - - -	419—427
Habits and Tempers likely to be contracted, except guard-	
ed against - - - - -	427—430
Attention to the Conduct of Clerks -	431—436
The preceding general Remarks illustrated with respect to	
the Poor Laws - - - - -	430—440
With respect to Disputes between Masters and their Ap-	
prentices or Servants - - - - -	440, 441
The Public Peace - - - - -	441, 442
Goals - - - - -	442, 443
Public Houses - - - - -	443—445
Expenditure of Public Money - - -	445, 446
The Excise Laws, Game Laws, and all summary Con-	
victions - - - - -	446—448
Watching over the Public Morals -	448, 449
	Super-

FIRST VOLUME.

xv

	PAGE
Superintending inferior Officers of the Police	449, 450
Acting in concurrence with a Brother Justice	450, 451
Court of Sessions - - - -	452—454
Municipal Magistrates often Justices -	454—457
Corporations—their Power—Abuses not unfrequently occurring - - - -	457—461
Some other Duties - - -	461

2 PLAN OF THE WORK EXPLAINED.

In a former treatise (*a*) I have briefly endeavoured to investigate the fundamental rules of natural justice ; and to point out the wide range of moral obligations incumbent on mankind in general, together with the grounds on which they rest. The moral principles there maintained have a close connection with the subjects now to be discussed ; and may in some cases evidently form the ultimate basis of my reasoning. But whatever may be the occasions on which they are applicable, I do not mean to occupy the time of the reader with an attempt to establish them afresh ; but would refer him to the proofs already advanced in support of them in the proper place.

The plan proposed requires me to enter into a regular and to a certain degree minute detail of the various duties of the different classes of society, which fall within its limits ; to combine in every branch of my enquiry, as far as the nature of the subjects will admit, the con-

(*a*) The Principles of Moral Philosophy investigated, and briefly applied to the Constitution of Civil Society. Second edition, 1791.

clusions of reason with the dictates of religion; and to subjoin such inferences, remarks, and illustrations as appear immediately applicable to the circumstances of Englishmen in common life. In the prosecution of a plan of this nature, the attention will of course be attracted in the first place by those objects which are of the most general importance, and those situations which render the persons fixed in them particularly conspicuous. And it will afterwards be directed to points which interest either a smaller proportion of the community, or that part of it which is more withdrawn from public observation. I propose therefore, in the outset of the undertaking, to investigate the conformity between the acknowledged principles of the British Constitution, as it stands and is administered at present, and those fundamental rules of political wisdom, which ought to be carefully regarded in every civil society: to offer, in the next place, some remarks on the functions of the Sovereign, and to notice the general duties of Englishmen as subjects and fellow-citizens: and afterwards to discriminate the upper and middle classes of the inhabitants of this country according to the se-

2 PLAN OF THE WORK EXPLAINED.

In a former treatise (*a*) I have briefly endeavoured to investigate the fundamental rules of natural justice ; and to point out the wide range of moral obligations incumbent on mankind in general, together with the grounds on which they rest. The moral principles there maintained have a close connection with the subjects now to be discussed ; and may in some cases evidently form the ultimate basis of my reasoning. But whatever may be the occasions on which they are applicable, I do not mean to occupy the time of the reader with an attempt to establish them afresh ; but would refer him to the proofs already advanced in support of them in the proper place.

The plan proposed requires me to enter into a regular and to a certain degree minute detail of the various duties of the different classes of society, which fall within its limits ; to combine in every branch of my enquiry, as far as the nature of the subjects will admit, the con-

(*a*) The Principles of Moral Philosophy investigated and briefly applied to the Constitution of Civil Society.—Second edition, 1791.

clusions

will not pass without further notice in the course of the following pages.


To the choice of this plan I was determined by a persuasion, that it offered the fairest opportunity of effectually bringing home the duties of men to their understandings and bosoms. He who would read with indifference an abstract enquiry into the nature of a particular duty, and the proper means of performing it, might be struck with a faithful representation of the occasions on which the performance of that duty is required, the manner in which it is to be effected, and the pretences by which it is commonly evaded, exemplified in the occurrences which attend his own profession and situation in life. Remarks, which in the former case he might probably have slighted as the reveries of speculative theory, in the latter press upon his mind corroborated by the energy of authentic facts, of the truth of which he has had ocular and almost hourly demonstration. I may likewise add as a further reason for adopting the method proposed, that I do not recollect any ethical work in which a similar plan is pursued with regularity, and at the same

4 PLAN OF THE WORK EXPLAINED.

veral ranks, professions, and employments into which they are distributed, beginning with those of a public nature, and descending to those which are private and domestic, and to state the several duties and temptations peculiar to each. It will probably not be expected that in a work of this kind a distinct part should be specifically addressed to those, who are placed in the lowest ranks of society. By them argumentative and bulky treatises on morality will not be read. The careful perusal of their bible, and the study of short and familiar expositions of its precepts, aided by the public and private admonitions of their pastors, are to them the principal sources of instruction. Not but that the morals of the common people may be materially corrected, their understandings improved, and their misconceptions rectified, with equal benefit to themselves and to the whole community, by judicious attention on the part of their superiors among the laity. To pursue those objects with diligence, with perseverance, and with a studious regard to the difference of temporary or local circumstances, practices, and opinions, is a moral obligation strictly incumbent on all persons in the higher classes ; and one which will

found applied to persons of one description which equally appertain to those of another ; instead of sheltering myself under the acknowledged impossibility of avoiding all defects in any undertaking, or pleading that the defect alleged is of no prominent magnitude, I might reply that it is a circumstance which I scarcely desire to be otherwise. For, as the matter now stands, even the cursory enquirer, who turns to a particular chapter from curiosity to know what is there stated concerning the profession of which it treats, though a profession in which he is not personally engaged ; may chance to meet with observations, which he may perceive to be not altogether inapplicable to his own.

It remains only to add, that I have studied throughout the subsequent chapters to avoid general censures, and indiscriminate imputations, as altogether repugnant to candour and justice ; and that in speaking of the errors and faults of any particular profession, I mean simply to note them as errors and faults to which persons in that profession are considerably liable, without in any degree desigining to



8 PLAN OF THE WORK EXPLAINED.

intimate that they are chargeable on all or on most of the individuals belonging to it. If unguarded expressions should occasionally occur (and I can by no means expect entirely to have avoided them), they will be interpreted, I trust, according to the explanation which I have now given.

CHAP.

CHAP. II.

GENERAL REMARKS ON THE FIRST PRINCIPLES OF THE BRITISH CONSTITUTION.

ATTRACTED by social affections and sympathies; drawn together by common weaknesses and wants; familiarized during childhood to habits of intercourse and subordination; discovering from reason and from experience, that the enjoyment of natural rights among unconnected individuals must be extremely limited and precarious; men have shewn the strongest disposition in every age to unite in civil societies. So powerful has this propensity evinced itself, so great and multifarious have been the accessions of security and happiness which have universally resulted from the union; that perhaps not a single instance can be produced where men of honest views and sober understandings, who have once been in possession of the blessings of social intercourse, have spontaneously renounced all connections

10 REMARKS ON THE FIRST PRINCIPLES

nections with their fellow-creatures. It has been the ruffian, prowling like the wild beast for his prey, or the enthusiast, dreaming that austerity is holiness, who has insulated himself in caves and deserts. Whenever by external circumstances a society once formed has been separated or dissolved; whether in patriarchal days the death of the common parent, or the deficiency of pasturage, induced the younger branches of the family to seek fresh habitations; whether in later times the calamities of inundations, of famine, of pestilence, or of war, the desire of foreign comforts, or the pressure of domestic miseries, have influenced men to abandon their place of residence, and broken asunder the ties by which they were united; the renewal of those ties in another land, or the establishment of similar connections, has always been the first and the darling object of those who survived the subverted community. Like globules of quicksilver dispersed over a polished surface, they have ever been seen in constant agitation and inquietude while distinct; hastening together, and with a continually accelerated velocity, when they have come within the sphere of each other's attraction; and, whatever

whatever be the size of the masses into which they have gradually been combined, arranging themselves in each round a common center.

The forms of government which have been instituted in different nations have been severally decided by the operation of general causes powerfully affecting the human mind, as the climate and nature of the country; and by the influence of incidental circumstances, as foreign invasions, internal dissensions, and the character and fortune of particular individuals. Hence, in different ages of the world, and in communities stationed at different points in the scale of civilization, almost every conceivable variety has found a place. If we examine the condition of rude and uncultivated tribes, and thence advance to the contemplation of societies in some degree more polished and enlightened, we may trace the marks of a gradual progress from the lowest stage of union, to the regular and stable form of a body politic. We may observe men held together by a tie so slight, as to constitute the simplest arrangement under which any thing deserving the name of a social connection can subsist; an en-

[illegible]

is improbable that, except under very particular circumstances, they should continue long under so rude a form. The same general causes, which had induced men to enter into that slight connection, would speedily allure them into one more close and more beneficial. And as the numbers of a society became enlarged, and a clearer insight into the measures conducive to the general good was acquired

“to act against them with concert and vigour, than to
“maintain interior order by any public regulations.”—
These tribes have continued to the present day exactly in the same state in which the greater part of the inhabitants of North and South America were found by the Spaniards early in the sixteenth century. See Robertson’s *History of America*, 4th edit. vol. ii. p. 116—119.

The accounts given of the ancient Germans by Cæsar and Tacitus, of the Huns and Alans by Ammianus Marcellinus, and of the North American Indians by Charlevoix, which are brought into one point of view by Dr. Robertson in his *History of Charles V.* 8vo. vol. i. p. 246, &c. prove that in the nations respectively described by those authors, society had advanced few steps further at the time when the picture was drawn. The learned historian observes that, “while society remains in this simple state, men by
“uniting together scarcely relinquish any portion of their
“natural independence.”

by

14 REMARKS ON THE FIRST PRINCIPLES

by experience and reflection (*b*), an additional number of restraints on the rights of individuals would evidently promise an increase of public happiness. It would in consequence appear expedient that various laws and institutions should be framed to regulate the objects of internal polity, the transfer and descent of property, the proof of crimes, and the in-

(*b*) Dr. Robertson (Hist. Charles V. vol. i. p. 16), speaking of the northern conquerors of Europe, remarks that "self-defence was their chief care, and seems to have been the *sole* object of their first institutions and policy;" but that afterwards, "instead of those loose associations which, though they scarcely diminished their personal independence, had been sufficient for their security while they remained in their original countries; they saw the necessity of confederating more closely together, and of relinquishing some of their private rights, in order to attain public safety."

The whole of Dr. Robertson's View of the Progress of Society in Europe, with the notes and illustrations, contained in the first volume of his History of Charles V. affords a very apposite elucidation of this subject. The same author, in his History of America, exhibits instances of civil government in various stages of its progress. See particularly his Account of the People of Bogota, vol. ii. p. 121—123; of the Mexicans, vol. iii. p. 159, &c.—and of the Peruvians, p. 209, &c.

fiction

fiction of punishments ; and be established as binding on all who should choose to be members of the community ; that officers should be appointed to superintend the execution of them ; that a public force should be constituted for the purpose of ensuring domestic tranquillity by exacting obedience to the laws, and of repelling the attacks of invaders ; and that a legislative power, temporary or permanent, should be deputed to watch over the whole ; and be invested with the authority, subjected to more or fewer limitations, of enacting such ordinances from time to time, as it should deem essential to the welfare of the rising state. In proportion as events were more or less favourable to the diffusion of knowledge and refinement, a shorter or a longer period would elapse before a country could attain to any of the settled modes of political administration, which prevail among the polished nations of Europe.

Among the moral obligations incumbent on all men as accountable beings, there are some which in different countries and on particular occasions assume different forms, point to different modes of conduct, and have to encounter
the

16 REMARKS ON THE FIRST PRINCIPLES

the opposition of different temptations and impediments, in consequence of peculiarities in the established forms of civil government. No ethical work therefore, which professes to treat of the duties of various classes of society in Great Britain, can be complete as to its plan, unless it pays a marked attention to the British Constitution. The uses of the principal parts of that Constitution will be distinctly noticed in subsequent chapters, in which the respective duties of the individuals composing the several branches of the Legislature will be discussed. The way however may be cleared for those details, by a previous investigation of some points of a more general nature. The present chapter therefore will be employed in ascertaining those leading principles, the observance of which political wisdom seems to require as essential to the equity and good conduct of civil government ; and in examining how far each of those principles is observed in the existing (c) Constitution of this realm.

In

(c) This expression is used in the present chapter, in a sense perhaps somewhat more extended than its usual acceptance ; not merely as characterising the form of government

In the discussion of this subject little more will commonly be necessary than briefly to state the principles themselves, with the grounds on which they rest. For a very slight degree of reflection will evince that they are fully comprehended within the general outline of the British Constitution; and the particular manner in which they are carried into effect will be more fitly investigated hereafter, when the functions of the several branches of the Legislature come to be distinctly considered. One or two points however will require rather more explanation.

1. The first principle dictated by political wisdom is this; that those fundamental rules be observed, which natural justice inculcates as the proper groundwork of all social institutions. For as far as these are violated or neglected, oppression will take place in the community; the members will gradually become more and more dissatisfied; and if the hard-

ernment by King, Lords, and Commons, but as including the general spirit of the laws, and of the principles which guide the execution of them.

That in the whole code of 1
there is not an individual statute,
accustomed to the investigation of
ciples can fairly charge with an
from the line of strict justice, is a
the validity of which it would be t
contend. It is not likely that such
could be maintained with respect
vernment existing. But that the B
stitution bears in every part of it the
strong characters of justice, is a tru
minent and obvious, that it shoul
titled to the immediate assent of eve
advocate for the duty of civil ob
whatever theory he may be dispo
the obligation. If he founds the rig
vernment on the genuine and solid

that in each of the three branches it is sanctioned not merely by the passive concurrence, but by the avowed and zealous approbation of the great mass of the Community ; that it is regarded with an attachment, which, being established on the wisest principles, and confirmed by the experience of ages, is, we trust, more likely to increase than to abate, and may equally preclude from all hopes of success the favourers of a republican form of government on the one hand, and the supporters of the indefeasible rights of kings on the other. If he contents himself with looking to expediency alone, and measures the title of Civil Governors to the submission of their subjects solely by the scale of the general welfare ; he discovers persons and property secured, industry encouraged and rewarded, and public and private happiness permanently enjoyed in Great Britain, in a degree scarcely if ever paralleled in any other part of the earth.

One leading circumstance however in the British Constitution, the state of Popular Representation, has been repeatedly stigmatised as incompatible with the fundamental principles

20 REMARKS ON THE FIRST PRINCIPLES

of justice. It is undoubtedly true that a very large majority of the inhabitants of this kingdom has no elective voice in the appointment of the members of the House of Commons ; in other words, most of the people of Great Britain have no suffrage in the nomination of the persons who are to enact the laws, by which non-electors in common with the rest of the nation are to be governed. But the limited diffusion of the elective franchise cannot fairly be affirmed to be necessarily a breach (*d*) of justice. The right of voting for a member of parliament is a *public trust* ; it is as truly a civil office as the most conspicuous employment in the State ; and, humble as it may seem, is a civil office of considerable importance. All public offices and trusts being constituted in this kingdom for the general good of the whole ; it is just that they should be conferred under such political conditions as the general good may demand ; and be devolved to those persons alone, who possess the political qualifications deemed essential to the proper discharge

(*d*) Whether the limitation of the right of voting be repugnant to sound policy, is a question which will be considered hereafter in its proper place.

of the duties attached to them. Of these conditions and qualifications the nation is the judge. In exercising its judgment, it is bound not to establish invidious distinctions founded on unreasonable and partial grounds of preference. The medium which ought to be studied in the establishment of every civil qualification is to lay no greater restraint on the rights of any individual than is manifestly desirable for the general benefit of the community. But when the nation has fixed according to its best views of public utility the terms on which each public office shall be conferred, and the description of persons to whom it shall be entrusted ; no man who is destitute of the civil qualifications prescribed has any plea for complaining of injustice in being precluded from filling the post. It would be as unreasonable in a person thus disqualified to contend that he is treated with injustice in not being permitted to be an elector, as it would be to affirm that he is unjustly treated in not being permitted to be king. The king and the elector are alike public officers ; and the nation has the same right to appoint citizens of a particular description to choose members of parliament, as

22 REMARKS ON THE FIRST PRINCIPLES

it has to appoint a particular family to occupy the throne.

We have also heard of late a direct charge of injustice urged against the whole of the British Constitution, on the ground of the Government being hereditary. The substance of the argument is, that to establish a particular family with hereditary powers is despotism, because it operates to preclude the consent of succeeding generations; that the generation which first selects a person, and invests him with sovereignty, acts according to its own free determination, and lives under a Government chosen and established by itself; but in establishing hereditary succession it assumes a character to which it has no right; it changes itself from a Legislator to a Testator, and affects to make its will, thereby to take from each subsequent race of men the right which itself had exercised, of choosing any form of government deemed advisable, and to force on them a previously appointed form against their consent (e).

This

(e) Had they, who urge this argument, pointed their accusations not against the abstract institution of hereditary Govern-

This argument would prove, were it valid, much more than they who allege it apprehend or desire. It would prove the inherent injustice not only of hereditary Government, but of all Government. Generations of men, similar as the individuals who compose them may be to the leaves (*f*) of the forest in short-lived glory, are not like them swept away together by the sudden desolation of autumn, and replaced by a new succession bursting at once into life in the spring. According to the fixed order of nature, they decay, and are renewed, by a gradual and almost imperceptible change; the parent disappears, but his offspring already supplies his place: death seizes every indivi-

Government, but solely against the language of some of the Acts of Parliament by which it is established in this kingdom, it must be admitted that a reply would have been difficult. Statutes which describe the people of a country as "most humbly and faithfully submitting themselves, *their heirs and posterity for ever*," to any particular family; or as "binding themselves, *their heirs and posterity*, to that family, its heirs and posterity," or to any particular form of government whatever, "*to the end of time*;" profess to dispose of the rights of succeeding generations, which are beyond the reach of their control; and afford an example of language equally extravagant and nugatory.

(*f*) Οἱ περ φύλλων γενεή, τοιούδε καὶ ἀνδρῶν. HOM.

24 REMARKS ON THE FIRST PRINCIPLES

dual in his turn, but in the midst of his ravages the society continues to exist in undecaying vigour. It would follow then from the principle on which the injustice of hereditary power is attempted to be proved, that on the very first moment after the establishment of any Constitution, when a single individual of the country, who at the time of its being established was a child under the control of his parent, should attain to years of discretion, and become entitled to the common rights of men, the injustice of the Government would commence. To him the Government, had it been settled but a week or a day, would be hereditary; "it would operate to preclude his consent, and would be a despotism." Not necessarily so, it may perhaps be replied; the young man might freely consent to accept the form of government with which he would see all around him satisfied. Undoubtedly he might; but does not this concession furnish a complete answer to the charge of injustice urged against the institution of hereditary power? Does it not point out the way by which the justice of our own Government, though hereditary, is rendered incontestable, on the very principle on which it is questioned?

ed? Consent given by every native of Great Britain in his turn, when he arrives at the age of discretion, to the government which he finds adopted by his countrymen ; and expressed by his continuing in the land, and voluntarily accepting the protection of the State, with entire consciousness that it is afforded to him only on the reciprocal condition of obedience to the laws ; constitutes him fully and justly a British subject. No compulsion was used or threatened ; the act was entirely his own. Had he been averse to acquiesce in the Constitution sanctioned by his countrymen, the world was before him, and he was at liberty (g) to depart. He is not subject to the Government because his ancestors obeyed it ; but because he has voluntarily engaged to obey it himself.

The

(g) There is at present no act of parliament in force prohibiting any person whatever from going out of the kingdom at his own discretion ; the last statute to that effect having been repealed in the reign of James I. Blackstone's Comm. 10th edition, vol. i. p. 266. And " by the common law every man may go out of the realm for whatever cause he pleaseth without obtaining the king's leave, provided that he is under no injunction of staying at home ; which liberty was expressly declared in king
" John's

26 REMARKS ON THE FIRST PRINCIPLES

The true state of the matter is this. The institution of any particular form of government, hereditary or otherwise, lays before each succeeding member of the community a considerable inducement to accept it, from the very circumstance of its being established, and from the inconveniences which would attend a removal to another country. The more excellent the Constitution, the stronger will the inducement be; but compliance with it is a voluntary act. Similar inducements are inseparably connected with every human institution, whether public, private, or domestic. And he who on that ground charges his ancestors with injustice in thus setting before him an hereditary Government, might with equal reason complain, that by the erection of houses and the introduction of agriculture they had "de-

"John's Great Charter." Blackstone, vol. i. p. 265. And though "because every man ought of right to *defend* the king and his realm, therefore the king at his pleasure may command him by his writ that he go not out of the realm without licence;" (Blackstone, *ibid.*) no man will think it probable that individuals dissatisfied with the established Constitution of their country will ever be constrained to stay that they may be employed in defending it.

"Spotically

“spotically precluded him” from living in a cave and feeding on acorns.

2. Political wisdom requires the existence of a legislative body; and that some efficient part of the Legislature be appointed by the people, and ultimately speak their sense.

If there be no legislative body, the government is the despotism of an individual. If there be a legislative body wholly appointed by an individual, he is still despotic, though circuitously. If the legislative body be hereditary, or self-appointed, where there is no monarch, it is a despotic aristocracy; where there is a monarch, it becomes exclusively despotic by enslaving him, or partaker of a joint despotism by confederating with him.

These evils are precluded by assigning to the people, as is the case in Great Britain, the appointment of one branch of the Legislature, formed in such a manner as that it shall finally speak their sense, whenever that sense is decided and permanent; and armed with sufficient powers ultimately to ensure success, under those circumstances, to its determination.

To

28 REMARKS ON THE FIRST PRINCIPLES

To give full security to the people; the right of elective suffrage should be conferred on great numbers, and should be easily attainable. Thus in Great Britain the electors amount to some hundred thousands; and besides the multitudes who may acquire the right of voting in boroughs by various methods, every man may purchase a vote for a county, who can pay for a piece of land worth forty shillings a year.

It is a thing by no means unreasonable in itself, or repugnant to the liberal spirit of political wisdom, that the Constitution should require a large portion of those who choose to live under its protection, to be satisfied without possessing a voice in the appointment of their immediate legislators. The grand object to be had in view in imparting the elective franchise is to secure, as far as may be possible, the choice of proper representatives. By this consideration alone the number and description of electors ought to be regulated. That the description of electors in Great Britain might in some respects be altered with great advantage to the public, so as to produce, often perhaps a better choice of a representative, and still more frequently a
very

very important diminution of corruption, profligacy, and vice, cannot, I think, be reasonably doubted. But if the consideration already stated undeniably requires, on the one hand, that the whole number of electors in the kingdom should bear an adequate proportion to the amount of the inhabitants; it seems equally to require, on the other, that the right of voting should be confined to men competent, and likely to discharge the trust committed to them in a manner conducive to the public good. If we reflect on the uninformed condition of multitudes in the lower ranks of society; on the blind deference which they commonly pay to the will of their immediate superiors; on the temptations they are under of being corrupted by bribes; on the facility with which they may be deluded by artful misrepresentations and inflammatory harangues; on the difficulty of preventing confusion and riots in popular assemblies spreading over the face of a whole kingdom; on the rapidity with which tumults excited by design or accident in one assembly would be communicated by contagion to another, until the country would be agitated with general convulsions: if we reflect on the dangers to be
dreaded

30 REMARKS ON THE FIRST PRINCIPLES

dreaded from these and other circumstances which would attend the plan of universal suffrage, we shall probably see great reason to rejoice that the elective right is limited under the British Constitution. And we are not to forget that, if any inconveniences and hardships are to be apprehended in consequence of limiting it, they are necessarily much diminished, if not altogether removed, by the very small share of property requisite to procure the privilege of voting for county members.

3. The Legislature of every well regulated State ought to be so constructed that the members of it may have a common interest with the rest of the community; it should be composed of men belonging to various classes and professions; and should be open in all its parts, and on all occasions, to the petitions and representations of the people.

It is obvious how necessary the observance of these rules is to the welfare of the whole community, and to the interest of each particular class of citizens. And it is no less obvious with what marked attention they are regarded in the British Constitution.

4. Le-

4. Legislative assemblies should be considerably, but not immoderately, numerous; they should enjoy perfect freedom of debate; and should be regulated in their proceedings by such forms as may ensure a full and deliberate investigation of each subject which comes before them, and at the same time admit of accelerated decisions in critical emergencies.

If a legislative assembly consists of few members, it wants the wisdom which results from the collected counsels of many able men; it is apt to become arbitrary in its proceedings; and is more within the reach of ordinary corruption. If it is extremely numerous, it becomes tumultuous and disorderly in its discussions, intemperate and capricious in its resolves; and each member is liable to act less under the restraints both of conscience and of shame, trusting that the misconduct of an individual will not be discerned in the crowd, or will be obliterated by the multitude of similar examples. The remainder of the rule requires no explanation.

With respect to each of the particulars specified in this rule, the British Constitution evidently merits the highest praise.

5. Le-

30 REMARKS ON THE FIRST PRINCIPLES

dreaded from these and other circumstances which would attend the plan of universal suffrage, we shall probably see great reason to rejoice that the elective right is limited under the British Constitution. And we are not to forget that, if any inconveniences and hardships are to be apprehended in consequence of limiting it, they are necessarily much diminished, if not altogether removed, by the very small share of property requisite to procure the privilege of voting for county members.

3. The Legislature of every well regulated State ought to be so constructed that the members of it may have a common interest with the rest of the community; it should be composed of men belonging to various classes and professions; and should be open in all its parts, and on all occasions, to the petitions and representations of the people.

It is obvious how necessary the observance of these rules is to the welfare of the whole community, and to the interest of each particular class of citizens. And it is no less obvious with what marked attention they are regarded in the British Constitution.

4. Le-

4. Legislative assemblies should be considerably, but not immoderately, numerous; they should enjoy perfect freedom of debate; and should be regulated in their proceedings by such forms as may ensure a full and deliberate investigation of each subject which comes before them, and at the same time admit of accelerated decisions in critical emergencies.

If a legislative assembly consists of few members, it wants the wisdom which results from the collected counsels of many able men; it is apt to become arbitrary in its proceedings; and is more within the reach of ordinary corruption. If it is extremely numerous, it becomes tumultuous and disorderly in its discussions, intemperate and capricious in its resolves; and each member is liable to act less under the restraints both of conscience and of shame, trusting that the misconduct of an individual will not be discerned in the crowd, or will be obliterated by the multitude of similar examples. The remainder of the rule requires no explanation.

With respect to each of the particulars specified in this rule, the British Constitution evidently merits the highest praise.

5. Le-

32 REMARKS ON THE FIRST PRINCIPLES

5. Legislative bodies ought to be so far renewed from time to time as to prevent them from degenerating into tyrannical oligarchies ; and in such a manner that the change, or course of succession, in any part of them, should take place without confusion, tumult, stoppage of public business, or interruption of the established form of government.

The policy of this rule is sufficiently manifest. The requisite change and renewal in the British Legislature is attained by the limited duration of parliament. And as it is made in that branch of the Legislature which is appointed by the people ; those dangers are prevented, which otherwise might have been dreaded from the hereditary power lodged in the other branches. Strict laws are in force to prevent disorders at elections ; and the Constitution has provided that not even the death of the supreme magistrate shall afford room for sedition and anarchy, or create any material impediment to the progress of public business. In the eye of the law the throne is never vacant ; but from the moment (*h*) of the death of

(*h*) Blackstone, vol. i. p. 249.

its possessor is supposed to be filled by his heir. Further, on the death of any king or queen, "the parliament in being shall continue for six months, unless sooner prorogued or dissolved by the successor; if the parliament be at the time of the king's death separated by adjournment or prorogation, it shall notwithstanding assemble immediately; and if no parliament is then in being, the members of the last parliament shall assemble and be again a parliament (*i*).⁽ⁱ⁾ In like manner "the privy council shall continue for six months after the demise of the crown, unless sooner determined by the successor (*k*).^(k) The judges too, by an act of parliament passed in the reign and at the recommendation of our present Sovereign, are continued in their (*l*) offices notwithstanding any demise of the Crown. And all the great (*m*) officers of State, and in general all officers civil or military throughout the whole British empire, continue in office for six months after the king's demise, unless sooner removed by the successor.

(*i*) Blackstone, vol. i. p. 189. (*k*) *Ib.* p. 232.

(*l*) *Ib.* p. 268. (*m*) By 6 Anne, c. 7, clause 8.

34 REMARKS ON THE FIRST PRINCIPLES

6. The Legislative and Executive Powers ought to be distinct.

If the same individual possesses the exclusive power of enacting and administering the laws, he will be influenced in framing them by a reference to the persons whom he foresees that they will affect. Hence, instead of being founded on comprehensive principles of justice, and directed to the general good of the State, they will continually be fabricated for the purpose of gratifying the private animosities and promoting the selfish ends of the Legislator. Tied down to no precedents, subjected to no superior jurisdiction, nor limited by any co-ordinate authority; he can at pleasure strain the interpretation of an existing statute, or create a new one, to crush the most virtuous member of the community who may have offended him, or to screen a criminal partisan of his own. If the legislative and executive functions be vested in the same body of men, this reasoning will be equally applicable.

The British Constitution has guarded against these dangers by committing the office of enacting laws to Parliament, and of executing them

to

to the Sovereign. The consent of the latter is requisite in all acts of legislation ; but the evils which have been specified are precluded by the previous and concurrent sanction of the Houses of Lords and Commons being essential to the existence of every law. Statutes are enacted by the British Legislature without its being in general possible to foresee on whom they may attach ; and must unavoidably be executed by the judicial officers (n) of the Crown without

(n) Sir William Blackstone justly observes, that it is of the highest importance to the security of freedom, that the actual exercise of judicial authority should be committed to persons neither removable at the will of the Crown, nor acting in other capacities as its immediate servants. After noticing the evils which would arise if the administration of common justice were joined with the legislative power, he adds : “ Were it joined with the executive, this union might soon be an overbalance for the legislative. For which reason, by the statute of 16 Car. I. c. 10, which abolished the Court of Star-Chamber, effectual care is taken to remove all judicial power out of the hands of the King’s Privy Council ; who, as then was evident from recent instances, might soon be inclined to pronounce that for law, which was most agreeable to the prince or his officers. Nothing therefore is more to be avoided in a free country than uniting the provinces of a judge and a minister of state.” Vol. i. p. 269.

36 REMARKS ON THE FIRST PRINCIPLES

respect of persons. And though the Constitution, in order to prevent the detriment to the public, and the private hardships which would result on particular occasions, from an uniform application of general rules, has wisely intrusted the Sovereign with the power of remitting punishments; it has with equal wisdom laid various (o) restrictions on the exercise of this privilege, that it may not be employed in such a manner as to give encouragement to vice; or to become dangerous to public liberty.

7. The Executive Power should be one; it should be armed with sufficient authority to enforce obedience to the laws, and to fulfil the other functions with which it is intrusted; and should at the same time be deterred from an unjust or unwise use of its prerogatives, by being subjected to a proper degree and a proper kind of control and of responsibility.

Whatever may be the case with regard to petty States, there seems little reason to expect

(o) See these restrictions enumerated, Blackstone, vol. iv. p. 398—401.

that.

that the affairs of a great empire will be permanently conducted at home and abroad with the requisite vigour, steadiness, dispatch, and tranquillity, unless the superintendency and control of the whole executive department be committed to a single person.

In Great Britain the powers of the Sovereign are proved by experience adequate to the discharge of the duties imposed upon him. If an unforeseen emergence should ever require some temporary and constitutional extension of them, the Parliament is authorised to grant it.

In Monarchical Governments, it would be equally difficult and unwise to inflict personal punishment on the supreme magistrate for neglect of duty, or breach of trust. The attempt, even when the crime was incontestable, would commonly produce a civil war. Besides, the Sovereign, were he exposed to the possibility of punishment like a common criminal, would scarcely be able to retain the respect of his subjects in a degree sufficient to ensure respect to the laws. If guilt on his part should be manifest, and pass unpunished,

38 REMARKS ON THE FIRST PRINCIPLES

he would be encouraged to greater enormities ; if punished, and in a way short of death, either the disgrace which he had undergone would disqualify him from filling the throne afterwards with dignity and effect ; or the public compassion, excited by his humiliation and encouraged by his adherents, would turn the tide of popularity beyond measure in his favour, and enable him not only to wreak his vengeance on the authors of his punishment, but perhaps even to assume arbitrary power. For these reasons, among others, it seems the part of wisdom to suffer no penalty to impend over the Monarch himself, except the forfeiture of the crown in extreme cases ; and to guard against his possible misconduct or treachery, by making the public concurrence of his ministers indispensable to the validity of his proceedings, and rendering them strictly responsible for the counsel which they give, and the commands which they execute. This method is adopted in the British Constitution.

8. The expenditure of public money should be brought to open account.

The

The policy of this rule, and the observance of it in Great Britain, are equally apparent.

9. The proceedings of courts of justice should be public; and justice should be administered with as little delay and expence as may be.

In the administration of justice the first requisite is that it be impartial. That the courts of justice in Great Britain are equally open to the poor (*p*) and to the rich, to the subject and

(*p*) There is one description of British subjects who are by no means equally protected with their fellow-citizens in the enjoyment of liberty: those namely, who are liable to be seized by a press-gang, and compelled to serve on board a man of war, even at the very moment when they are returning to their families after several years of absence, sickness, and toil, in distant quarters of the globe. If any argument can in some instances rescue the practice of impressing seamen from the charge of direct injustice, it must be this; that they who follow a seafaring life are previously aware of that attendant hardship, and may therefore be regarded as having consented to the risk of undergoing it. A similar argument may in some measure perhaps be extended to the case of landmen occasionally impressed. At any rate, however, this plea for the justice of impressing mariners is extremely defective. The occupa-

40 REMARKS ON THE FIRST PRINCIPLES

and to the monarch; and that in general the decisions are formed and the laws administered with as great a degree of uprightness and wisdom as it is possible to expect in a human tribunal, are truths universally acknowledged. The appointment of judges of the supreme

tion of a seaman is often the allotment of friends and relations during his childhood. And when choice takes place, it is frequently at a thoughtless age, and when the hazard of servitude is not likely to be seriously weighed. It is not only the liberty of the sailor which suffers by the impress service; his property is equally exposed to injury. Time for beneficial labour is to him property. And, when on board a man of war, he incurs such a loss by the smallness of his wages compared with those which he might have gained in a merchant's service, as is by no means compensated by the chance of prize-money, or by any other advantages of his new situation. The practice in question, besides being chargeable with injustice, is likewise so repugnant to the spirit of freedom and of humanity, and so little congenial to the general principles of the British laws, that the nation must be inexcusable should it continue it on the mere ground of *saving expence*. By serious deliberations on the subject renewed from time to time, and by a careful review of the measures adopted in foreign countries to answer the same purpose, it would surely be possible to devise some plan for manning the navy, which would not be liable to such weighty objections, and would afford a satisfactory prospect of securing the public safety,

courts

courts rewarded with ample salaries, and removable from their office only on the concurrent application of both Houses of Parliament; the admirable institution of juries; and the permission of new trials in a variety of cases, are among the precautions by which the Constitution has wisely endeavoured to secure this momentous object. Yet all its precautions might have been found ineffectual, had it not been for that publicity in judicial proceedings which is established in this country; a publicity which renders the conduct of each judge during the whole course of a trial, as well as his final decision, known not only to the parties concerned and their agents, but to all persons whatever who have the curiosity to be present; and to the members of the legal profession who crowd round the tribunal, anxious to mark his behaviour and determination, and too discerning not to discover any material impropriety in either. This publicity is in effect rendered universal by means of the press, which in all cases of importance conveys a detailed account of judicial transactions to every quarter of the kingdom,

When

42 REMARKS ON THE FIRST PRINCIPLES

When the impartial administration of justice is ensured, the next requisite is the avoiding of unnecessary delay and expence. For the reasons which have been stated in the last paragraph, the publicity of our courts tends likewise to deter the judge from interposing needless, vexatious, and burthensome delays before he brings the cause to a conclusion. The Habeas Corpus Act and various other excellent provisions of law contribute to the same general purpose. The speedy and cheap distribution of justice is also consulted in this kingdom by the appointment of local officers and magistrates empowered to decide, under due responsibility, causes of inferior moment; and by the half-yearly circuits of the judges to determine all matters of considerable importance. For the purpose of providing able and upright expounders of the laws, and ensuring equitable, wise, and concordant decisions throughout the community, it is highly expedient that there should be a few stationary courts of judicature invested with extensive jurisdiction, yet subjected to one supreme court of appeal. These courts are naturally fixed in the metropolis. The pressure of business of various

various kinds which comes upon them from every part of the country, and the multiplicity of forms useful on the whole, but frequently inconvenient and injurious in particular cases, with which they are now encumbered, occasion great dilatoriness and heavy charges in the progress of many of the suits which are brought before them. But these evils are far more than compensated to the public by the benefits resulting from the institution. Perhaps however it might be found, were the investigation committed to competent and disinterested enquirers, that much time and money might be saved to the contending parties, without any risk of substantial justice, by the abolition or alteration of certain forms now become useless, and by simplifying proceedings unnecessarily complicated and prolix.

10. The freedom of the press should be checked by no laws which are not indispensably necessary for the restraint of malevolence and vice seeking to subvert the public tranquillity or the happiness of private life.

That Government which dares not allow its
own

44 REMARKS ON THE FIRST PRINCIPLES

own laws and proceedings, and the conduct of the courts of justice, to be fairly discussed by the public, betrays its weakness or its guilt. In Great Britain the freedom of the press is become as it were a part of the Constitution. And with respect to the precautions indicated by the rule as expedient for the purpose of curbing its licentiousness, Englishmen have reason to rejoice that the case of every person charged with a libel, whether of a public or of a private nature, is submitted to the decision of a jury, fully empowered to take into the account, in this as in any other criminal charge, the intention of the party accused.

11. Finally, every Constitution of Government is radically and dangerously defective, which does not contain within itself the means of remedying without tumult and national disorder the imperfections in its frame which experience may bring to light; and of correcting the abuses which time and accidents may introduce into the administration of public affairs.

Whoever considers the power, which every member of either House of Parliament possesses,

esses, of proposing in his place such measures as he deems advisable, and the power of the Legislature as to adopting the measures proposed, will not impute this defect to the British Constitution. And the imputation, were it brought forward, would be repelled by a reference to the many great improvements which have been (g) peaceably

(g) The improvements made in the British Constitution by Magna Charta and Charta de Foresta (Blackstone, vol. iv. p. 423), and by several other charters and public acts, in the earlier period of our history, do not fall within this description, having been obtained, principally or entirely, by means of successful insurrections. But among the happy changes quietly effected in the manner pointed out by the Constitution itself, we may particularly mention the enacting of the Petition of Right in the reign of Charles I. "by which," Sir William Blackstone observes (vol. iv. p. 437), "the English Constitution received great alteration and improvement;" the Habeas Corpus Act, and the abolition of military tenures, in the reign of Charles II.; the Bill of Rights and the Toleration Act about the time of the Revolution. And to speak of the reign of his present Majesty, the completion of the independency of the Judges, the extension of the rights of citizens to Roman Catholics, the recent bill respecting libels, and the decision of Parliament that its dissolution does not abate a pending impeachment, may be regarded as acquisitions of the most salutary nature, and highly beneficial to the Constitution of the realm.

46 REMARKS ON THE FIRST PRINCIPLES

made in the Constitution at different periods reaching even to the present times. No human work can attain perfection; nor is any human work carried nearly to that degree of excellence which it is capable of attaining, but by the exertions of growing wisdom continued through the lapse of ages. In proportion as we survey the governments and the internal condition of the greater part of the civilised world, we shall see additional reason to be thankful to Providence for having cast our lot under the British Constitution. And we have cause still further to rejoice, that a regular method of removing any remaining defects in the Constitution and the Laws (and every good man should be anxious for the quiet removal of all of which he is conscious) is provided and indicated by the Constitution itself. The humblest and the poorest subject may carry his complaints to the British Parliament. And if once the sense of the nation be decidedly formed, and permanently expressed, concerning the injustice or impolicy of any particular law; the public voice will reach every branch of the legislature, and obtain that change in the system which moral duty and the general welfare demand. It is thus

thus that improvements have been made in the Constitution for centuries past ; and it is thus, we trust, that they will continue to be made for centuries to come.

CHAP. III.

ON THE DUTIES OF THE SOVEREIGN.

BEFORE we commence our enquiry into the duties incumbent on Englishmen, either in consequence of their common situation as subjects and fellow-citizens, or of their peculiar stations, professions and employments; it is necessary to advert to the offices of the Chief Magistrate whom the Constitution has placed on the throne. His power of influencing the public happiness is as great as his station exalted.

The remarks to be made on the duties attached to royalty, may not improperly be preceded by a statement of the principal advantages resulting to Great Britain from the monarchical branch of the Government.

By lodging the supreme executive power in the hands of a single person, subjected to the superintending control of the Houses of
Parliament,

Parliament, and to the checks arising from ministerial responsibility (*a*); the Constitution has precluded, as far perhaps as any possible contingency in human affairs can be said to be precluded, those civil conflicts, by which the happiness and liberty of other states have been subverted. The noble, however aspiring; the demagogue, however turbulent; the general, however renowned for his victories, sees every channel obstructed, by which he might hope to raise himself to dominion over his fellow-citizens. Every ambitious project is extinguished by the absence of all probability of success. The splendid prize of empire is already bestowed by the nation on its chosen Sovereign. In Rome, and other ancient republics, the want of a common superior encouraged popular and military leaders successively to aim at rendering themselves masters of the State; until the people at length sought a refuge from the miseries brought upon them by the dissensions of the contending chieftains in submission to absolute despotism. The establishment of a limited monarchy, by preventing

(*a*) Vide *supra*, p. 38.

50 ON THE DUTIES OF THE SOVEREIGN.

similar calamities and a similar termination of them, is one of the strongest safeguards of British freedom.

By the same wise arrangement the Constitution has likewise provided against the ruinous effects of quarrels and contests between the Houses of Lords and Commons; against the reciprocal encroachments of those houses on the privileges of each other; and against the encroachment of either house on the rights of the people. Like the keystone of an arch, the Monarchy binds together with compressive energy the whole frame of Government; and unites it into a firm and well-cemented fabric, every part of which maintains its proper place. By the power of dissolving Parliament, the Crown is at all times enabled to put an end to any projects which a House of Commons may be pushing into execution in opposition to the national will and the public good. By the power of adding without limit to the Peerage, it is no less qualified to curb any unjustifiable attempts of the House of Lords. In critical emergencies it will commonly happen that the Sovereign will be sufficiently impelled by considerations

siderations of personal interest to resort to these measures; conscious as he must be, that if either of the Houses were on the point of gaining an unconstitutional ascendancy over the other, he must effectually interpose to maintain the balance, or expect speedily to see the banners of the victor displayed over the ruins of royal authority. He would be equally prompted by similar motives, and equally enabled by the prerogatives already mentioned, to break any combination formed by the two Houses for the acquisition of dominion. And if we reflect on the immense revenues of this country, and the enormous patronage resulting from the civil, military, naval, financial, and other establishments; we shall see strong reason to believe, that if the monarchical branch of the legislature were annihilated, and the disposal of these revenues and of this patronage were committed to either House, or to both Houses of Parliament; the event, whether of their conflicts or of their confederation, would be, that the Government of this kingdom would center in an aristocratic body, armed with inexhaustible resources to secure the perpetuity of its own sway, and despotically to hold the people in subjection.

52 ON THE DUTIES OF THE SOVEREIGN.

From the unity of the Executive Power we may naturally expect freedom from corruption in resolving on measures to be pursued; secrecy in negotiating treaties, and in concerting military operations; and universally, vigour and dispatch in enforcing the laws at home, and in the conduct of public affairs abroad.

The Constitution likewise ordains, that the British Crown shall descend in a fixed order of hereditary succession. The wisdom of this determination is incontrovertible. Whatever evils may occasionally arise from the sceptre falling into inefficient and improper hands; they are nothing in comparison with the miseries to which the subjects of an elective monarchy are exposed without intermission, from the cabals, foreign as well as domestic, which uniformly take place during the life of each occupier of the throne, and the civil wars which frequently rage upon his death. These miseries are aggravated by the additional considerations, that the Crown will seldom be placed by the violence of popular party, or by the final decision of the sword, on a head
more

more worthy of it than that on which it would have devolved, had the principle of hereditary succession been adopted; that the fortunate competitor will commonly treat one part of his people as friends and allies, the other as vanquished enemies; and that the frequent recurrence of elections to the throne will not improbably terminate in the country's being deprived of its liberties, either by being annexed to the territories of potent neighbours, or by the establishment of a military despotism at home. We have recently seen the Polish nation taught by fatal experience to seek for tranquillity and substantial freedom in the change of an elective to an hereditary Crown; and have beheld with grief and abhorrence the iniquitous measures which have rendered its plans abortive.

The functions of the Sovereign are now to be considered.

The British nation delegates the power of making the laws, by which the whole empire is to be governed, to three branches, as they are termed, in this respect of co-ordinate au-

54 ON THE DUTIES OF THE SOVEREIGN.

thority: the King, the House of Lords, and the House of Commons. The right indeed of originating Acts of Parliament is, with the single (*b*) exception of Acts of Grace or Pardon, committed exclusively to the two latter; but the united assent of all the branches of the Legislature is essential to the existence of a law.

Though the Constitution authorises the King to recommend certain measures to the consideration of Parliament, as well in person as through the medium of his Ministers; yet, with the exception already noticed, it does not suppose him to know any thing, in his official capacity, of Bills, until they are presented to him after having received the assent of both Houses; and consequently prohibits him from all interference respecting them during their passage through either.

The legislative authority of the Crown has

(*b*) "When an Act of Grace or Pardon is passed, it is first signed by his Majesty, and then read once only in each of the Houses, without any new engrossing, or amendment." Blackstone, vol. i. p. 184.

been

been exercised for a considerable period solely in approving the Bills presented by the Lords and Commons; insomuch that its power of negating them, though indisputably constitutional, is not only regarded as a dormant right, but would probably be attended, if exerted, with very general odium. Whether the public welfare might be promoted in some conceivable cases by the revival of the royal negative, would be a question which might give birth to great variety of opinion. Yet it is clear, on the one hand, that in a free country the Chief Magistrate neither ought, nor would in fact find himself able, finally to refuse his assent to any just measure proposed to him by the other branches of the Legislature, and permanently demanded by the voice of the nation. And on the other hand it is not to be denied, that the rejection of an obnoxious Bill by a direct negative would be a measure far less injurious to the public good, than its defeat by secret and unconstitutional influence. The one step would at least be an open and manly exercise of a legal right; the other by its very concealment would betray the consciousness of guilt; and would tend in its

56 ON THE DUTIES OF THE SOVEREIGN.

effects to extinguish public spirit, to encourage future venality, and to subvert the foundations of national freedom.

In this kingdom, and in every land where genuine liberty is established, whatever be the form of its government, and the denomination of its public officers, it is the steady voice of the people which decides what shall be law. This degree of popular weight is not the incidental result of a free Constitution ; it is essential to the Constitution's being free. While such is the state of the Constitution of Great Britain (and no man who is a friend to the true dignity of the throne or to the happiness of the subject can wish it otherwise), the actual power of the King will consist in the influence which he possesses over the mind of the people. And not only the beneficial effects, but the absolute degree, of that influence will depend on the manner in which he discharges the public functions committed to him by the laws ; and avails himself of that pervading ascendancy, that undefinable but energetic control over men and manners, which results from his elevated station.

The

The peculiar duty of the Sovereign is to promote the glory of God by promoting the true welfare of the people over which he reigns. The most obvious means by which it is to be discharged are, the care of the public safety, and the improvement of the public morals. The virtue of a nation is indeed so closely connected with its real security, that every step which contributes to improve the former, tends to confirm the latter. The several prerogatives and offices of Royalty may be rendered instrumental to the attainment of both these objects.

In every free and well-regulated Government, the Sovereign will neither find himself compelled permanently to employ in the administration of public affairs men whom the short-lived vehemence of a faction may force into office ; nor able to persist in refusing to accept as his servants those whom the voice of the nation, clearly and steadily expressed, shall recommend. Notwithstanding the deference which is paid by the Monarch of this country, and, except under extraordinary circumstances, ought to be paid, to the wisdom of the Houses
of

58 ON THE DUTIES OF THE SOVEREIGN.

of Parliament; he has very considerable power with respect to the choice of his ministers. To select from the assemblage of public characters with which he is conversant, those who are most distinguished for integrity, for public spirit, for understanding, for industry; to appropriate to each department of the State men endowed with talents most adapted to its peculiar business; to unite in each of his servants, as far as the emergencies of national affairs may permit, purity of private morals with the lustre of official abilities; these are blessings which no King of Great Britain, who has the zealous discharge of his duty at heart, will find himself often precluded from rendering to his subjects by the ambitious combinations of party, or the cabals of selfish individuals.

To check as much as may be possible the spirit of party, appears to be one of the first duties and noblest employments of a King. To countenance it, is to encourage interested nobles and aspiring commoners, factious orators, needy and profligate adventurers, to associate in bands and confederacies for the purpose of obtruding themselves into all the offices of Govern-

Government; and, under the name and garb of servants, of imposing on the Monarch and on the People chains too strong to be broken. It is to proscribe men from employments, not because their characters are impeachable or ambiguous; not because their talents are inadequate or unknown; but because they were born in an obnoxious province; are descended from unpopular ancestors; are suspected of attending to measures rather than to men; to reason and to public good rather than to hackneyed watch-words and appellations; and hesitate to promise implicit allegiance to the chief, and obedience to every principle, of the political conspiracy. These are not the characteristics of a particular party, but of all party; and will be displayed in stronger or fainter colours according to the genius of the leaders and the circumstances of the times. Their prevalence at any period not only endangers the final stability of the empire by dividing it into two conflicting portions; by perpetuating jealousies, animosities, and feuds; by threatening the annihilation of patriotism and public spirit; but more speedily obscures the dignity and destroys the power of the Monarch. Perhaps

60 ON THE DUTIES OF THE SOVEREIGN.

haps he may hope to preserve his authority by uniting himself with the ruling faction. But “Kings had need beware how they side themselves, and make themselves as of a faction or party. For leagues within the State are ever pernicious to monarchies; for they raise an obligation paramount to the obligation of Sovereignty, and make the King *tanquam unus ex nobis* (c).” A King, though he may be a member of a party, can never be the leader. That post will ever be filled by the bold declaimer whose influence commands the Houses of Parliament. All that is permitted to the Sovereign, no longer a Sovereign but in name, is to co-operate in forging his own fetters, and to endeavour to persuade himself that he is free; to be flattered by his potent associates, when they are at leisure and in the humour; to be menaced by them, when he dares to intimate disapprobation of their schemes; to be overawed by the one part of his subjects, whom he denominates his friends; and despised by the other, whom he has forced to be his enemies.

(c) Lord Bacon's Essays, p. 184. Lond. 1685.

But

But when a Monarch considers himself as the common father of his people; when, rejecting all distinctions not originating in personal merit, he is ready to employ in the service of the State any of his subjects possessed of virtues and talents capable of furthering its welfare; it is difficult to say whether he ensures, as far as human conduct can ensure, more substantial advantages to his country, or more satisfaction, honour, and authority to himself. Roused by his impartial call, public spirit revives in the remotest extremities of his dominions, prompting all classes of citizens to whatever exertions the general good may require. No individual is deterred from standing forward in the common cause, by the fear that, in consequence of inauspicious party connections, his most strenuous efforts will be coldly accepted, his most important services forgotten. Political dissensions no longer make one part of a family an inveterate enemy to the other. Harmony and confidence reign throughout the community, and afford the most stable security against attacks from abroad. Each member of administration, sufficiently accord-

ing

62 ON THE DUTIES OF THE SOVEREIGN.

ing with his co-adjutors in a few fundamental principles, no longer feels himself bound by supposed ties of honour, nor urged by the dread of exclusion from office, to acquiesce in measures with which his judgment or his conscience is dissatisfied. He is no longer tempted at the expence of truth to defend the unwarrantable proceedings of his colleagues ; and to buttress up the tottering fabric of their power, lest he should himself be overwhelmed in its fall. The Sovereign in the mean time reaps the fruits of his wisdom in a full participation of the public happiness ; and in the possession of a degree of personal ease and independence, which no other line of conduct could have enabled him to attain. Strong in the consciousness of national esteem, and surrounded by eminent men from every quarter of the realm solicitous to be employed in his service, he is not at the mercy of a knot of confederated partisans ; he is not obliged to tolerate the unjustifiable or impolitic measures of ministers whom he disapproves, lest they should abandon him to others to whom he has a still greater repugnance ; he feels himself free to
exert

exert his constitutional prerogatives for the benefit of all his subjects ; he feels himself in deed and in truth a King.

This is not an ideal state of things impossible to be realized in Great Britain. It is true that it has not yet been realized ; and obstacles scarcely possible to be removed were long opposed to all who might be inclined to make the attempt. Not to look to events prior to the memorable æra of the Revolution ; the changes in Government which took place at that time, the two subsequent rebellions, together with various incidental circumstances of more recent date, concurred to divide the nation into two distinct and hostile parties ; a division which the misguided or selfish policy of individuals has laboured to defend and to perpetuate. But time has so far removed the ground of these party distinctions ; and the secret operation of various principles, good and bad, has of late years made such inroads into the ancient system, has so intermingled the squadrons and interchanged the colours of the contending armies ; that a Sovereign who should now endeavour to reduce the spirit of

64 ON THE DUTIES OF THE SOVEREIGN.

party to the narrowest limits within which the genius of a free Constitution will permit it to be confined (and those bounds the natural jealousy entertained of Government, and the stimulus of disappointed ambition, will always enable it to fill) might not find the object very difficult to be accomplished. He might experience for a time attempts to seduce or to intimidate him from his purpose: and a large share of prudence (I mean honest prudence, honest not only as to the end proposed, but equally so as to the mode of pursuing it), together with steady resolution never losing sight of its aim, would be requisite to overcome the last struggles of interested combinations, and the remaining antipathies of prejudice. By a sparing introduction of those descriptions of good citizens least favoured by the tide of prevailing opinion into the subordinate departments of office; by gradually elevating them, in a fair proportion to their numbers and their qualifications, to posts of more importance; by giving time for passion to cool, for aversion to subside; by studying to obviate occasions and to remove causes of offence; and above all things, by uniformly appealing to the sober judgement and the love of his

his people ; and by evincing his whole conduct to be such as might be expected from the vigilant and impartial friend and protector of all his subjects ; he could scarcely fail to gain very important if not complete success.

The same attention to the national safety and the national morals, and the same disregard of mere party distinctions, which ought to characterize the conduct of the King with respect to the nomination of his ministers, ought equally to guide the exercise of his constitutional influence in filling up vacancies in the other departments of the State, whether civil, military, or ecclesiastical ; and in the choice of those public officers whom he appoints to attend on his own person, or honours with especial marks of royal favour.

Towards persons in the political world who distinguish themselves by opposition to the measures of Government, it is the wisdom and the duty of a King to conduct himself with cordial frankness ; and neither hastily to indulge, nor act so as to be suspected of hastily indulging, an opinion, that their dislike to the

66 ON THE DUTIES OF THE SOVEREIGN.

plans and proceedings of his ministers arises from sinister motives, or is connected with personal aversion to himself. The advantage of this candid and conciliating behaviour will be felt at all times ; and will be particularly conspicuous, if the vicissitude of events should afterwards make it expedient to invest these very men with the offices of administration.

There is a natural propensity in the human mind to imitate the conduct and adopt the sentiments of those who are invested with authority. The example of the Sovereign, like the impulse of a stone on the yielding surface of a lake, diffuses its influence around in concentric and gradually enlarging circles, to an extent which the eye can neither trace nor limit. The power which he possesses of checking or of accelerating the progress of luxury, dissipation, and vice, of exciting or repressing genuine patriotism, of encouraging or discountenancing christian virtue, is not confined to those who are eye-witnesses of his own manner of life. The rumour is communicated from the frequenter of the court to the inhabitant of the country ; it spreads from town to town, from
village

village to village, until it reaches and affects the most obscure corners of the empire. The direction of the censorial jurisdiction of public opinion is in the hands of the Monarch. It is a jurisdiction before which the most audacious criminals stand abashed. It is the only jurisdiction by which in this country several enormous vices can be restrained. The greatest blessings have commonly their attendant evils. The spirit of Liberty, which happily pervades the British Constitution, defeats in various instances the operation of positive statutes, and renders their wisest provisions nearly or altogether unavailing. The proof requisite for the conviction of the gambler, and of various other violators of the laws (*d*), is sometimes impossible to be obtained, and is rarely to be obtained without the utmost difficulty; partly because

(*d*) The influence of the Sovereign might be most beneficially displayed in checking, and probably might be successful in exterminating, an irrational, savage, and unchristian practice, which laws have hitherto been unable to abolish; and which owes its existence to the countenance given to it by a class of subjects, who from their profession are particularly alive to royal approbation and censure. It is scarcely necessary to add that I allude to Duelling.

68 ON THE DUTIES OF THE SOVEREIGN.

those decisive methods of detection to which recourse would at once be had in despotic Governments, would not here be endured; and partly because mistaken conceptions of honour, resulting from a general consciousness of freedom, have attached an unmerited degree of odium to the character of an informer, even if he should have been wholly actuated by the purest motives. But if once the lively example, the silent but marked dislike, the calm but pointed animadversions of the Monarch shall have branded a vicious practice as scandalous and contemptible in the royal estimation; it will speedily become disreputable in that of the public. Numbers, whom inadvertence or fashion had engaged in it, will abandon it; and those who are too hardened or too infatuated to be reclaimed, will shrink from notice, and strive to bury the infamy of guilt in scenes remote from general inspection, instead of corrupting society by shamelessly obtruding their vices, and braving the laws of God and their Country in open day. But to render the influence of the Sovereign in promoting religion and morality widely and permanently efficacious, it is indispensably requisite that it
be

be exerted with prudence, with perseverance, with impartiality. The world must be convinced that the practice has drawn down disapprobation on the man, not the man on the practice. It is almost needless to add, that evils the most alarming will spread with rapidity to an indefinite extent, if the prevailing vices of the times be sanctioned by the conduct or tolerated by the indifference of the King, and thus tacitly at least recommended to universal imitation.

There are various methods in addition to those already mentioned, by which the Sovereign has it in his power to contribute most effectually to the true welfare of his subjects. The success of the most useful institutions for the administration of relief to the poor and comfort to the afflicted; the establishment of the most promising plans for the advancement of morals, for the improvement of the police, for the encouragement of industry, will frequently depend on the aid which they derive partly from his personal munificence, and still more from the general favour and credit which his protection will ensure to them.

70 ON THE DUTIES OF THE SOVEREIGN.

The simple intimation of his sentiments will often prove sufficient to ensure those reforms in corporations, in schools, in universities, and other public establishments, necessary to remove the defects which the lapse of time invariably discovers or produces ; and which the sincere friends of the respective institutions may have long beheld with fruitless anxiety.

The distribution of titles, and of orders of merit, regulated by the dictates of reason and conscience, will have a visible effect on the conduct of the numerous candidates who aspire to obtain them. And the nation at large will receive a deep and most desirable impression, when it shall see honours applied to their proper use, the reward of virtue and public desert. Sentiments of an opposite nature, equally unfavourable to public virtue and to the personal estimation of the Sovereign, will be no less deeply impressed on all ranks of society ; if they shall behold him lavishing marks of distinction on men who are devoid of private worth, and undistinguished by patriotic exertions.

Though

Though the beneficial effects of the wise and upright conduct of the King in the cases which have been specified will principally be felt by the people over whom he reigns ; yet it may materially conduce to the happiness of other nations, partly by setting before their eyes a pattern of what they are entitled to expect from their own Governors, and partly by exciting those Governors to emulate so glorious an example. And as advances in science, and discoveries in arts, are much more speedily borrowed and more easily domesticated than the improvement of laws and the reformation of manners ; the efforts of a King of Great Britain in the encouragement of genius and learning are scarcely less interesting, in some instances they may even be more interesting, to foreigners than to his own subjects. It falls within his immediate province to patronize societies instituted for the cultivation of natural and experimental philosophy ; to encourage inventions which may facilitate the progress or increase the excellence of manufactures ; to countenance the professors of manly and liberal arts ; to animate every department of literature ; to excite by personal favour, by inci-

72 ON THE DUTIES OF THE SOVEREIGN.

dental rewards, and perhaps by the institution of honorary and pecuniary prizes, the exertions of all who have distinguished or are capable of distinguishing themselves by meritorious studies and pursuits; and occasionally to direct their labours into those channels, in which they appear most likely to promote the public welfare. And it is peculiarly his office to avail himself of the opportunities which result from his supreme direction of the British Navy, to explore untraversed oceans, to bring unknown regions to light; and, while he is laying the foundations of a commercial intercourse which may enrich the distant posterity of his subjects, to introduce among savage tribes the immediate blessings of civilization and christianity.

It does not fall within the plan of the present work to recite at greater length, and pursue to a more minute detail, the effects which a King may produce on the manners and condition of the people committed to his care. To the historian belongs the cheering office of distinctly tracing the progress of those streams of happiness which a Sovereign dispenses throughout

throughout his realms, who, regarding all his subjects as his children, watches over them with unwearied and impartial affection ; who scrupulously observes their rights and liberties ; obeys the laws, and causes others to obey them ; rejects the baits of foreign as well as of domestic ambition ; cherishes useful industry, learning, and science ; eradicates ancient prejudices ; abolishes immoral customs ; discourages corruption, luxury, and vice ; and by public encouragement and private example inculcates the important lesson, that the welfare of a nation is to be sought, like that of an individual, in the cultivation of christian virtue. On the historian also rests the painful task of delineating the miseries of that kingdom, whose Monarch studies to aggrandize himself by encroaching on popular freedom, by fomenting party divisions, by holding up rewards to venal servility ; who impoverishes his subjects by his profusion ; lavishes their wealth and their blood in unnecessary wars ; connives at the injustice of his ministers ; sanctions the licentiousness of his court ; and by the influence of personal irreligion saps the foundations of national morality.

The

74 ON THE DUTIES OF THE SOVEREIGN.

The Monarch, who is truly anxious for the happiness of his people, will not satisfy himself with personally exercising his constitutional authority with a view to that object. He will endeavour to give his subjects every possible degree of assurance that the advantages, which they have enjoyed under his administration, shall be continued to them when he shall no longer fill the throne. Impressed with this patriotic desire, he will regard the education of his family, not merely with the common feelings of a father; but with the anxieties inseparable from the recollection that it is a measure which may involve the welfare of millions. He knows with what commanding influence the conduct of persons allied to royalty affects all ranks of society. He knows not which, or how many, of his children may eventually wear the crown. He will engrave then on their bosoms the importance, the dangers, and the duties, of the station in which they are born, and of the office to which they may succeed. He will train them in the studies, habits, and occupations which may most incline and enable them to be extensively useful. He will associate them with such friends
and

and companions as recommend to imitation purity of character by respectful freedom and attractive ingenuousness of manners. He will guard them against the servility of flatterers, and the busy artifices of the vicious. Above all things, he will imprint on their hearts the proofs and the precepts of christianity ; and fix their thoughts and their solicitude on that impending day of enquiry and retribution, when all earthly distinctions shall be no more.

A King who in the discharge of his various functions shall thus labour to promote the happiness of man and the glory of God, will ensure to himself, not only a brighter crown hereafter, but an extent of present power greater perhaps than a despot ever knew, greater than a despot ever enjoyed in security. And it is a power which he need not blush to possess ; it is a lawful power ; it springs not from tyrannical edicts ; not from the submission of bribed or intimidated senates ; but from the eager approbation and unbounded love of his people.

CHAP. IV.

ON THE GENERAL DUTIES OF ENGLISHMEN
AS SUBJECTS AND FELLOW-CITIZENS.

THE first duty of a subject as such is to fulfil the engagements into which he has entered with his country. The engagements, by which a subject of this kingdom is bound, are ascertained by the laws of the land, and by those established usages, which, although they are not expressly recorded in any Act of Parliament, are recognized as fair inferences from existing Statutes, or have at least received from general consent the authority of positive Laws. These statutes and usages define the measure of obedience due from him to the State ; they declare the several instances and degrees (a) in

(a) " Political or civil liberty, which is that of a member of society, is no other than natural liberty so far restrained, and no further, as is necessary and expedient for the general advantage of the public."—" Every man, when he enters into society, gives up a part of his natural liberty." Blackst. Com. vol. i. p. 125.

which

which his natural rights are restrained ; and describe the civil rights assigned to him in return.

A detail of this immense and fluctuating mass of particulars, however justly it might be required in a work professedly designed to convey legal knowledge, is not to be expected in a treatise which has moral instruction for its object, and addresses itself to readers of various descriptions. Yet there are some points too important to be dismissed without special observation. I shall therefore in the first place endeavour to state with precision the general obligation which the subject owes to his governors ; and shall afterwards make some remarks on those more indeterminate duties, in which greater latitude is afforded for the exercise of his own discretion.

I. The obedience of the subject is immediately due to the existing Government in consequence of its possessing the delegated authority of the State. It is not however an obedience without limit : it is not due in any case in which it would be a breach of duty to God ;
and

98 GENERAL DUTIES OF ENGLISHMEN

and in addition to that restriction, it is not due in any instance or degree in which the Governors do not possess authority from the State to require it. The propriety of these exceptions is sufficiently apparent. No one would undertake to vindicate by an appeal to human jurisdiction what would be rebellion against the Sovereign of the Universe; nor would any one conceive himself bound to support his lawful rulers in acts of usurpation. The only concern then of the subject in these respects is to be careful that his practice correspond with his principles. If he were to be required to do what he is seriously convinced would be sinful; to forsake, for example, the religious worship which he deems most acceptable to his Maker; to concur in unwarrantable acts against a fellow-citizen; or to serve against a foreign State in a war which in his conscience he firmly believed to be unjust, he ought to remember that neither the command of his superiors, nor even the unanimous voice of his countrymen, would justify his obedience. Such is the enlightened spirit of modern times, and so equitable are the general maxims of the British Constitution, that to intimate to an

Englishman of the present age what would be the line of his duty in these cases, may rather be deemed the boding of ignorant suspicion than the voice of salutary caution. What though in former ages Henry the Eighth required unwearied pliability in the consciences of his subjects? What though Charles the First commanded his collectors of revenue to exact illegal impositions from their fellow-citizens? What though his successor summoned those who served in his fleets and armies to carry on unjustifiable hostilities against the Dutch? It is almost as improbable, it may be said, that the persecution and injustice of those days should revive, as it is impossible for the days themselves to return. The establishment of the principles of the Reformation and of the Revolution undoubtedly promises a great degree of security against similar dangers. But it is not possible to affirm, that, in the fluctuation of human events and human interests, something similar to what has happened heretofore can never take place again. The evil may not recur in its ancient form, nor diffuse itself to its ancient extent. Yet, however varied in appearance, it may be essentially the same.

80 GENERAL DUTIES OF ENGLISHMEN

same. And on whatever principle it was the duty of a subject in former times to withstand at all hazards the commands of his governors, when they enjoined flagrant acts of impiety and injustice ; on the very same principle would it be at all times the duty of an Englishman steadily to decline obeying any orders of his superiors, which his conscience should tell him were in any degree impious or unjust.

Under the limitations which have been stated, it is the duty of every British subject to obey with punctuality, promptitude, and cheerfulness, the laws of the land which are actually in force ; that is, which are neither become obsolete by disuse, nor are understood to have been deprived by any other circumstance of their authority, though still continued in the Statute Book ; and all public usages admitted to have the obligatory power of laws. Reason inculcates this duty upon him as the result of his own positive engagement ; and her dictates are expressly supported and strengthened by Christianity.

The Christian Scriptures do not enjoin their
followers

followers to adopt any particular form of Government in preference to another; they do not professedly define what circumstances are necessary to constitute any one a lawful Governor; nor to what extent a lawful Governor has a right to require the obedience of his subjects. These were points altogether foreign to the views and objects of the sacred writers; who leave them to be decided, the first by the voluntary choice of different nations, the second by the rules of natural justice, the last by general principles of morality and the laws of each particular State. But in every country, as soon as those fundamental points are adjusted, Christianity interposes her sanctions; and pronounces it to be the duty of every man to obey the lawful commands, and to respect the persons, and pray for the welfare, of the magistrates of the community to which he belongs. "Submit yourselves for the Lord's sake," saith St. Peter, "to every ordinance of man," (to every person whom men have invested with any degree of lawful authority over you) "whether it be to the King as supreme, or unto Governors," (all subordinate magistrates) "as unto them that are sent by

82 GENERAL DUTIES OF ENGLISHMEN

“ him for the punishment of evil doers, and the
“ praise of them that do well.” 1 Peter, c. ii.
v. 13. Those who are thus *ordained by men*
to execute the functions of Governors are to
be obeyed “ for conscience sake ;” and there-
fore are said by St. Paul to be *ordained of*
God. “ There is no power but of God ;”
every form of lawful government and magis-
tracy is sanctioned by the Almighty : “ the
“ powers that be, are ordained of God ;” even
the idolatrous and persecuting Roman power
had authority from God to exact obedience
from those to whom the Apostle wrote, be-
cause their several countries had faithfully and
repeatedly engaged (*b*) to render it ; whence
St. Paul infers, that “ whoever resisteth the
“ power,” whoever withholds just obedience
from his lawful rulers, “ resisteth the ordinance
“ of God ; and they that resist shall receive to
“ themselves condemnation.” After various
pertinent instructions he concludes with this

(*b*) Christ had in like manner pronounced the Jews
bound to submit to the Roman Emperor, because they
acknowledged him for their Sovereign by the unequivocal
testimony of giving currency to his coin as to that of their
lawful Ruler, as well as by various other proofs.

general

general admonition : “ Render therefore to
 “ all” (to each magistrate in his proper depart-
 ment) “ their dues ; tribute, to whom tribute
 “ is due ; custom, to whom custom ; fear, to
 “ whom fear ; honour, to whom honour.”
 (Rom. xiii. 1—7.) In another part of the
 Scriptures the same Apostle directs private in-
 dividuals earnestly to pray for their magistrates,
 from the highest to the lowest, and to return
 thanks to Heaven for their welfare. “ I ex-
 “ hort therefore, that first of all supplications,
 “ prayers, intercessions, and giving of thanks,
 “ be made for all men ; for Kings, and for all
 “ that are in authority, that we may lead a
 “ quiet and peaceable life in all godliness and
 “ honesty ; for this is good and acceptable in
 “ the sight of God our Saviour.” 1 Timothy,
 c. ii. v. 1—3.

Of the obligations imposed by the laws and
 usages of the land, one of the most important
 is that of allegiance to the Sovereign. This
 obligation rests equally on all British subjects,
 though the greater part of them have not ex-
 pressly taken it upon themselves by oath. But
 all have taken it upon themselves by having

84 GENERAL DUTIES OF ENGLISHMEN

voluntarily continued, when arrived at years of discretion, to be inhabitants and citizens of Great Britain; for the laws of the land, which they have thus engaged to obey, clearly suppose and require that all who enjoy the protection of Government should repay it by allegiance. Formerly it was held, and many of our legal (c) writers appear to have been perfectly satisfied with the idea, that every person born within the jurisdiction of the King of Great Britain was bound, in consequence of that circumstance alone, to render him allegiance during life, as his absolute and indubitable right. This opinion was derived from the times of feudal barbarism, when the liege Lord considered his vassals in the same light as a farmer looks upon his cattle: as proprietor of the parent, he asserted that he had an indefeasible title to the offspring; as supreme owner of the soil, he claimed all who chanced to be born upon it, as *his own* (d) *men*. The minds of
men

(c) See Blackstone, vol. i. p. 368, &c.

(d) " Besides an oath of fealty or profession of faith to the Lord, which was the parent of our oath of allegiance, the vassal or tenant upon investiture did usually homage
" to

men are at present so far emancipated from the prejudices of ignorance, that few persons would now think of maintaining the claim of a Prince to allegiance from those born within his territories, on the ground which has been stated. The claim of natural, perpetual, and indefeasible allegiance is however still supported by authors of high repute; though they have chosen a new and more specious foundation to sustain the superstructure of their arguments. Sir William Blackstone, speaking of natural allegiance, says that "it is perpetual; (c) that it is due from all men born within the King's dominions immediately upon their birth. For immediately upon their birth they are under the King's protection, at a time too when (during their infancy) they are incapable of

"to his Lord; openly and humbly kneeling, being ungirt, uncovered, and holding up his hands both together between those of the Lord who sat before him; and there professing that he did become *his man*, from that day forth, of life, and limb, and earthly honour; and then he received a kiss from his Lord. Which ceremony was denominated *homagium*, or manhood, by the feudists, from the stated form of words, *Devenio vester homo*." Blackstone, vol. ii. p. 53.

(c) Blackstone, vol. i. p. 369.

86 GENERAL DUTIES OF ENGLISHMEN

“ protecting themselves. Natural allegiance
“ is therefore a debt of gratitude which cannot
“ be forfeited, cancelled or altered by any
“ change of time, place or circumstance, nor
“ by any thing but the united concurrence of
“ the Legislature. It is a principle of univer-
“ sal law, that the natural-born subject of one
“ Prince cannot by any act of his own, no not
“ by swearing allegiance to another, put off or
“ discharge his natural allegiance to the former.
“ For this natural allegiance was intrinsic and
“ primitive and antecedent to the other, and
“ cannot be divested without the concurrent
“ act of that Prince to whom it was first due.”
The principle here recited may have been a
principle of universal law in the feudal system ;
but it is not (*f*) a principle of universal jus-
tice.

(*f*) If I should be thought to treat this “ principle of uni-
“ versal law” with but little ceremony, I would beg leave
to observe, that the learned Judge himself from whom I
have transcribed it can see it deliberately violated and con-
tradicted on more than one occasion without expressing the
smallest disapprobation, and without appearing even to
suspect that there was any thing wrong in the proceeding.
He says, p. 372, 373, that in consequence of this general
principle

tice. To affirm that the mere circumstance of an infant's being born within the territories of any Monarch does of itself give that Monarch a right to govern the infant when grown up, would be confessed to be the height of absurdity. And there is no more reason for maintaining such a right to have accrued to him from the further circumstance of the child's being nurtured and protected within his realm from birth to manhood. The debt thereby incurred

principle of law, that "every man owes natural allegiance where he is born, a particular Act of Parliament became necessary after the Restoration for the *naturalization* of children of his Majesty's English subjects born in foreign countries during the troubles." And, "by several modern statutes, all children born out of the King's ligeance, whose fathers (or grandfathers by the father's side) were natural-born subjects, are now deemed to be *natural-born subjects themselves to all intents and purposes*, unless their said ancestors were attainted, &c." and being thus admitted to a full participation of the common rights of Englishmen, are consequently deemed to be bound to their common duties. Surely then this deservedly celebrated reasoner, who in a preceding page held such high language respecting the obligation of natural allegiance, affirming it to be "perpetual, and incapable of being forfeited, cancelled, or altered by any change of time, place, or circumstance, or

88 GENERAL DUTIES OF ENGLISHMEN

curred is, as Sir William Blackstone rightly terms it, a debt of *gratitude*. But the conclusion which he wished to establish, required him to have proved it a debt of justice. The payment of the latter, if refused, may be exacted by force: the discharge of the former (*g*) cannot be demanded compulsorily; it must flow from spontaneous sentiments of thankfulness on the part of him who has received the benefit. Were I to find on the public road a traveller thrown from his horse, with broken limbs, in a

“by any thing but the concurrence of that Prince to whom it was first due,” ought to have stigmatized these Acts of Parliament in the strongest terms of reprobation, as direct and premeditated breaches of justice; as immediately flying in the face of his favourite axiom of universal law; and as aiming to deprive the foreign Princes, in whose kingdoms these children of English parents chanced first to see the light, of their natural-born subjects. As no record of the consent of those Princes to the acts in question has yet been produced, ought he not to have pronounced them void from the beginning; and to have charged the British Nation to restore to each of those potentates “their own men” of whom we are defrauding them?

(*g*) “By our *exactions* of gratitude, and our frequent proposals to *enforce* its observance, we only shew that we “have mistaken its nature.” Ferguson’s History of Civil Society, 5th edit. p. 146.

state

state of insensibility, and on the point of expiring: were I to convey him to quiet lodgings, to provide the best medical attendance, and with a great degree of personal trouble and personal expence to effect his cure: I might conceive him to have incurred a debt of gratitude; but I should have no right to exact an indemnification. I do not say that, if he were able to return to me what had been expended on his account, he would be innocent in the sight of God, should he refuse to make me amends, were I to think it reasonable to desire it. Neither do I affirm that a person born and educated in Great Britain would be guiltless in the eye of his Maker, if when arrived at years of discretion he should quit the country on slender grounds, and decline to enrol himself among the subjects of the State. But he would at that period become invested with a right to freedom of action in this respect; and would be entitled on the principles of natural justice to decide according to his own judgment, and to choose in what part of the globe he would fix himself, and to what power he would pay allegiance in return for protection. The former is the price of the latter; and every man has a right,

90 GENERAL DUTIES OF ENGLISHMEN

right, until he enters into an agreement to the contrary, to purchase whatever he wants at that market, which offers it to him on the terms which he deems it the most eligible to accept.

The only just foundation on which the claim of allegiance can be rested is the voluntary act of the subject, whereby he takes the obligation upon himself. And since all British subjects have spontaneously incurred this obligation; some in the most solemn manner by taking the oath, and the rest no less effectually by accepting the protection and the civil rights which are granted by the laws on the condition of allegiance; I shall consider all as bound to the performance of the duties imposed (*b*) by the oath, and shall proceed to enquire into the nature and extent of their obligation.

The terms of the oath are these,

(*†*) The oath of allegiance may be tendered to all persons above the age of twelve years, whether natives, denizens, or aliens, either in the Court-leet of the manor, or in the Sheriff's Court. Blackstone, vol. i. p. 368.

" I A. B. do sincerely promise and swear,
" that I will be faithful and bear true allegiance
" to his Majesty King George. So help me
" God."

The import of the oath is to be collected from the known will of the imposer. It is the sense in which the imposer of an oath is conceived by him who takes it to design it to be understood, that regulates the obligations imposed by it.

Who then is the imposer of the oath of allegiance on the present race of Englishmen? Not surely the Convention Parliament at the Revolution, as an eminent (*i*) moralist asserts. Its authority lies buried in the graves of the members who composed it: nay, it expired before them on the dissolution of that Parliament. The present Legislature of the land, which confessedly has a right to abrogate the oath altogether, or to modify it in any manner which it may think proper, by for-

(*i*) Archdeacon Paley, in his *Elements of Moral and Political Philosophy*, vol. i. p. 206, 6th edit.

bearing

92 GENERAL DUTIES OF ENGLISHMEN

bearing to exercise this power continues and sanctions it; and is the imposer of the oath on its cotemporaries. We are no farther concerned to enquire into the meaning which the Convention Parliament annexed to the oath, than as such an enquiry might contribute to throw light on the sense affixed to it by the Parliament now existing, if doubts should arise on that subject. And in that case, if we should see reason to conclude that a new sense is attached to any of the terms of the oath by the present imposers (for there are few words and phrases in any language which may not be understood in a more or less qualified signification); whether it be a sense more strict or more lax than the original import, it is that which we are bound to embrace. To contend that we are tied to the former meaning, because it was that in which our ancestors in the preceding century, who introduced the oath, required it to be taken by those who were then alive, would be as unreasonable as it would be to maintain, that when we style our present Sovereign defender of the faith, we mean defender of the Popish faith, because that was the meaning of the title when first conferred by the
the

the See of Rome on an English Monarch. There seems no ground however to apprehend that in the present instance any change of signification in the terms of the oath has taken place. Most Englishmen, were a diversity of sentiment to arise concerning their real force, would admit that explanation of them to be just, which should be proved congenial to the principles of the Convention Parliament.

It has probably been the general veneration shewn by Englishmen to the proceedings of that Parliament, which has chiefly contributed to preserve unaltered the opinion of the import of the oath. The words of the oath are not in themselves the most likely to retain during a long course of years precisely the same acceptation. The term *allegiance* is in itself extremely vague and indeterminate: and indeed the purpose of the oath is rather to indicate the person entitled to the throne, than to define (*k*) the duties

(*k*) "The present form is more general and determinate than the former, the subject only promising that he will be faithful and bear true allegiance to the King; without mentioning his heirs, or specifying in the least where in that allegiance consists." Blackstone, vol. i. p. 368.

which

94 GENERAL DUTIES OF ENGLISHMEN

which are owing to him. On the former point it speaks in precise and unequivocal language ; on the latter it appears to express itself with studied obscurity ; and leaves the subject to interpret an ambiguous phrase by recurring to the laws of the land, and thence collecting the extent of his obligation.

The oath of abjuration, which is likewise imposed by the existing Legislature on all persons in any civil office, trust, or employment, and may be tendered by two Justices of the Peace to any person suspected of disaffection, is usually (1) understood to furnish an ample

(1) " The oath of abjuration introduced in the reign of King William very amply supplies the loose and general texture of the oath of allegiance ; it recognizing the right of his Majesty derived under the Act of Settlement ; engaging to support him to the utmost of the juror's power ; promising to disclose all traitorous conspiracies against him ; and expressly renouncing any claim of the descendants of the late Pretender." Blackstone, vol. i. p. 368.

I have not thought it requisite to notice the oath of supremacy, as it relates only to a denial of certain pretended rights arrogated by the See of Rome ; against which even
the

ample comment on the oath of allegiance. It contains a full recognition of the right of his Majesty to the Throne, under the Act of Settlement ; a promise of bearing faith and true allegiance to him, and of defending him against all treasons, and of disclosing them ; and a renunciation of all claims of the descendants of the late Pretender. These engagements and declarations are couched in very strong and explicit language. Yet perhaps they impose few, if any, obligations which were not already incurred by the oath of allegiance. For the promise of " being faithful and bearing true " allegiance to King George," necessarily implies that he, and he alone, has a legal right to the Crown ; and can scarcely be understood to mean less than that the juror will defend him in the possession of his legal right against unlawful attacks.

But though the oath of allegiance binds the

the Catholic subjects of Great Britain have delivered their general and unequivocal testimony. On this point none of my readers, I apprehend, can be at a loss to discern their duty, or unwilling to proceed to the full extent of it.

subject to support his Sovereign in the exercise of all the rights with which the existing laws invest him, it requires nothing further. It binds no man to support his Monarch in acts of injustice; it binds no man to render the least degree of obedience to the royal command, if it should enjoin the breach of the most inconsiderable law; or the infringement of a single right of the humblest peasant. In Great Britain the law is paramount and supreme; it rules every inhabitant of the realm from the throne to the cottage; it will not permit even its highest executive officer to put forth for its destruction those powers, which it has placed in his hands that they might be employed in enforcing its decrees; and if ever they should be put forth for that purpose, it prohibits every person under its jurisdiction from co-operating in the attempt.

The wisdom of the Constitution has fortified our liberty with such ample bulwarks, and the Family on the Throne has been so far from manifesting a disposition to subvert them; that we look forward to their permanency, under the Divine blessing, with a confidence

little short of perfect security. The nature however of the present work requires the statement of two fundamental rights, which the people of Great Britain have retained notwithstanding their engagements to their governors, for the defence of national freedom, and the augmentation of national happiness.

The first is the right of resuming the delegated authority of the State from the hands of governors, who deliberately and flagrantly violate the conditions on which it was committed to them.

The precedent of the Revolution in 1688 is still so fresh in the minds of Englishmen, that a simple reference to that happy event will sufficiently prove the truth of this position. But let it be remembered with respect to the right in question, if any crisis now unforeseen and unexpected should oblige posterity to have recourse to it; that in such a conjuncture the breach of contract on the part of the Sovereign would not justify a subject in co-operating forcibly to expel him from the throne, unless on mature reflection he should believe in his

98 GENERAL DUTIES OF ENGLISHMEN

conscience that the nation was desirous that the forfeiture should be exacted. If personal attachment to the Monarch, the hope of his conducting himself constitutionally for the future, or the dread of intestine broils and civil war, should determine the nation to overlook the criminal proceedings ; that determination once manifested (whether expressly declared, or impliedly conveyed by circumstances) would restore to the possessor of the throne the title to it which he had lost, and render every individual guilty of direct injustice who should question it on the ground of those acts of usurpation, which the public will had buried in pardon and oblivion. And further, if the wish of the nation to resume the royal power from the Monarch who had betrayed his trust should unequivocally appear ; yet no private subject would be innocent before God in taking up arms for that purpose, unless he were seriously persuaded that the attempt was desirable, and had a reasonable prospect of success. For though he might commit no breach of justice by engaging in a hopeless war against a manifest and declared tyrant ; he would shew a very sinful disregard of the welfare of his countrymen,

countrymen, an object which he ought to promote with zealous and unvarying solicitude, were he to irritate their oppressor to additional outrages, and to discourage future resistance, by a hasty and improvident appeal to the sword.

The unauthorised acts of power have hitherto been supposed to take place on the part of the Sovereign. But if either House of Parliament were resolutely to overleap the constitutional limits of its functions, and to persist in its usurpations in defiance of the other branches of the Legislature and of the Nation ; the principles which gave birth to the Revolution would in that case equally vindicate resistance on the part of those branches and of the people. And the private subject ought to be governed, as to the exercise of the right, by the considerations recently stated.

The British nation has likewise retained to itself the right of making any alterations in the Constitution, if extreme emergencies should ever occur, which it shall be firmly convinced that the public welfare and safety require ; al-

though the Constitutional Legislature should refuse its consent.

It has been asserted by writers, whose earnestness to avoid one extreme has carried them to another, that the Nation has no such right ; that the Constitution was settled at the Revolution for ever ; and that all rights similar to that under consideration, if Englishmen possessed them before, were at that period solemnly renounced and abdicated by our ancestors, not only for themselves, but for all their posterity to the end of time. This opinion is built upon certain expressions to be found in the Acts of Parliament passed in the reign of William and Mary respecting the succession to the crown, and already noticed in a former chapter. To suppose however that our ancestors were competent to abdicate the rights of their posterity, in this or in any respect, " to the end of time," is to suppose that they were competent to interfere between their descendants and the Omnipotent ; and to preclude them from receiving at his hand the common rights of the human species. It is to suppose that one generation may be competent

tent to bequeath its remotest posterity as vassals to the Great Mogul, or as slaves to the Emperor of Morocco. For if that generation has power to abdicate one right for its descendants, it has power to abdicate all; if it has power to consign them for ever to one potentate, it has power to consign them to any.

The main concern of every Englishman is not with the conduct of his ancestors, but with his own; not to discover whether his forefathers, in framing the Acts of Parliament alluded to, meant to arrogate to themselves a power, which it was impossible for them to possess, of renouncing for their posterity the right in question; but whether their posterity now existing have expressly or virtually renounced it for themselves.

Now it seems altogether improbable that any nation, in delegating the exercise of authority to governors under certain conditions, should design to contract, that provided those conditions should be observed on their part, no circumstance, no crisis whatever, no con-

ceivable vicissitude or emergency of human affairs, should induce it to interfere, and alter the Constitution without their consent. Nothing but evidence too authentic to be denied, too precise to be misunderstood, nothing short of moral demonstration, would be sufficient to prove, that if a fundamental change in the system were requisite in the opinion of the nation for the public safety and happiness, the Legislature would have a right, according to the terms on which it holds its authority, for ever to interpose its veto ; and to obstruct the general security and welfare, the avowed objects of all Civil Government, on the plea of the inviolability of its particular privileges.

In the present case, the demonstrative evidence appears on the other side of the question.

In proof of this assertion may be produced the direct testimony of a writer, generally esteemed one of the ablest expositors of the rights of Englishmen, and universally allowed to be free from an undue bias to the side of democratic control. Sir William Blackstone pronounces

pronounces (m), that "whenever a question arises between the society at large, and any magistrate vested with powers originally delegated by that society, *it must be decided by the voice of the society itself*: there is not upon earth any other tribunal to resort to." In another part of his Commentaries (n), speaking of the prerogative claimed by James the First, he says: "The people heard with astonishment doctrines preached from the throne and the pulpit subversive of liberty and property, and all the natural rights of humanity. They examined into the divinity of this claim, and found it weakly and fallaciously supported. And *common reason assured them that, if it were of human origin, no Constitution could establish it without power of revocation.*" And in another place, having first observed that in cases of unconstitutional oppression on the part of the Sovereign Power (o) "mankind will not be reasoned out of the feelings of humanity; nor will sacrifice their liberty by a scrupulous

(m) Blackstone, vol. i. p. 212. (n) Ibid. vol. iv. p. 436.

(o) Ibid. vol. i. p. 245.

“ adherence to those political maxims which
 “ were originally established to preserve it;”
 he afterwards proceeds in the following deci-
 sive terms: “ In these, or other circumstances
 “ *which a fertile imagination may furnish*, since
 “ both law and history are silent, it becomes
 “ us to be silent too; leaving to future gene-
 “ rations, whenever necessity and the safety
 “ of the whole shall require it, *the exertion of*
 “ *those inherent, though latent powers of society,*
 “ *which no climate, no time, no constitution, no*
 “ *contract (p), can ever destroy or diminish.*”

Few

(p) This expression of the learned Judge is not altogether accurate. An individual has it in his power to surrender for himself the right in question, like any other of his actual rights, by contract; and consequently all the individuals composing a nation are equally competent to surrender it for themselves. However, it is undeniably Sir William Blackstone's opinion, that the English Nation has entered into no such contract with its deputed Governors; and that cases of the sort now under discussion are not included in the social compact (the existence of which he repeatedly maintains), but are left open to be decided, if ever they should occur, by the will of the community.

Those who deny the existence of a social compact arrive by another road at the same conclusion. “ No usage,
 “ law or authority whatever is so binding, that it need or
 “ ought

Few national proceedings, however, could at any period be more criminal than a needless and improvident exercise of the right in question. On the presiding energy of Government depend all the advantages which polished and

“ought to be continued, when it may be changed with advantage to the community. The family of the Prince, the order of Succession, the prerogative of the Crown, the form and parts of the Legislature, together with the respective powers, office, duration, and mutual dependency of the several parts, are all only so many laws, mutable like other laws whenever expediency requires; either by the ordinary Act of the Legislature; or, *if the occasion deserve it, by the interposition of the people.*” Paley’s Moral and Political Philosophy, 6th edition, vol. ii. p. 146.

The Revolution of 1688 was an instance in which the right under consideration was exercised. The proceedings of the Convention Parliament can be vindicated only on these two principles: that the Nation had a right to make such changes in its Constitution as it deemed essential to the public good; even though they should directly affect the then constitutional rights of those of the Royal Family who had broken no compact, but on the contrary were universally acknowledged as the friends and defenders of the people: and that the Nation had authorised the Parliament to exercise that right on its behalf to a very ample extent. In conformity to these principles, after the expulsion of James, who had been guilty of the breach of contract; after the exclusion of the Prince of Wales, who had

100 GENERAL DUTIES OF ENGLISHMEN

though the Constitutional Legislature should refuse its consent.

It has been asserted by writers, whose earnestness to avoid one extreme has carried them to another, that the Nation has no such right ; that the Constitution was settled at the Revolution for ever ; and that all rights similar to that under consideration, if Englishmen possessed them before, were at that period solemnly renounced and abdicated by our ancestors, not only for themselves, but for all their posterity to the end of time. This opinion is built upon certain expressions to be found in the Acts of Parliament passed in the reign of William and Mary respecting the succession to the crown, and already noticed in a former chapter. To suppose however that our ancestors were competent to abdicate the rights of their posterity, in this or in any respect, " to the end of time," is to suppose that they were competent to interfere between their descendants and the Omnipotent ; and to preclude them from receiving at his hand the common rights of the human species. It is to suppose that one generation may be competent

tent to bequeath its remotest posterity as vassals to the Great Mogul, or as slaves to the Emperor of Morocco. For if that generation has power to abdicate one right for its descendants, it has power to abdicate all; if it has power to consign them for ever to one potentate, it has power to consign them to any.

The main concern of every Englishman is not with the conduct of his ancestors, but with his own; not to discover whether his forefathers, in framing the Acts of Parliament alluded to, meant to arrogate to themselves a power, which it was impossible for them to possess, of renouncing for their posterity the right in question; but whether their posterity now existing have expressly or virtually renounced it for themselves.

Now it seems altogether improbable that any nation, in delegating the exercise of authority to governors under certain conditions, should design to contract, that provided those conditions should be observed on their part, no circumstance, no crisis whatever, no con-

ceivable vicissitude or emergency of human affairs, should induce it to interfere, and alter the Constitution without their consent. Nothing but evidence too authentic to be denied, too precise to be misunderstood, nothing short of moral demonstration, would be sufficient to prove, that if a fundamental change in the system were requisite in the opinion of the nation for the public safety and happiness, the Legislature would have a right, according to the terms on which it holds its authority, for ever to interpose its veto ; and to obstruct the general security and welfare, the avowed objects of all Civil Government, on the plea of the inviolability of its particular privileges.

In the present case, the demonstrative evidence appears on the other side of the question.

In proof of this assertion may be produced the direct testimony of a writer, generally esteemed one of the ablest expositors of the rights of Englishmen, and universally allowed to be free from an undue bias to the side of democratic control. Sir William Blackstone pronounces

pronounces (m), that "whenever a question
 "arises between the society at large, and any
 "magistrate vested with powers originally de-
 "legated by that society, *it must be decided by*
 "*the voice of the society itself*: there is not
 "upon earth any other tribunal to resort to."
 In another part of his Commentaries (n),
 speaking of the prerogative claimed by James
 the First, he says: "The people heard with
 "astonishment doctrines preached from the
 "throne and the pulpit subversive of liberty
 "and property, and all the natural rights of
 "humanity. They examined into the divi-
 "nity of this claim, and found it weakly and
 "fallaciously supported. And *common reason*
 "*assured them that, if it were of human origin,*
 "*no Constitution could establish it without power*
 "*of revocation.*" And in another place, hav-
 ing first observed that in cases of unconsti-
 tutional oppression on the part of the Sove-
 reign Power (o) "mankind will not be rea-
 "soned out of the feelings of humanity; nor
 "will sacrifice their liberty by a scrupulous

(m) Blackstone, vol. i. p. 212. (n) Ibid. vol. iv. p. 436.

(o) Ibid. vol. i. p. 245.

104 GENERAL DUTIES OF ENGLISHMEN

“ adherence to those political maxims which
 “ were originally established to preserve it;”
 he afterwards proceeds in the following deci-
 sive terms : “ In these, or other circumstances
 “ *which a fertile imagination may furnish*, since
 “ both law and history are silent, it becomes
 “ us to be silent too ; leaving to future gene-
 “ rations, whenever necessity and the safety
 “ of the whole shall require it, *the exertion of*
 “ *those inherent, though latent powers of society,*
 “ *which no climate, no time, no constitution, no*
 “ *contract (p), can ever destroy or diminish.*”

Few

(p) This expression of the learned Judge is not altogether accurate. An individual has it in his power to surrender for himself the right in question, like any other of his actual rights, by contract; and consequently all the individuals composing a nation are equally competent to surrender it for themselves. However, it is undeniably Sir William Blackstone's opinion, that the English Nation has entered into no such contract with its deputed Governors ; and that cases of the sort now under discussion are not included in the social compact (the existence of which he repeatedly maintains), but are left open to be decided, if ever they should occur, by the will of the community.

Those who deny the existence of a social compact arrive by another road at the same conclusion. “ No usage,
 “ law or authority whatever is so binding, that it need or
 “ ought

Few national proceedings, however, could at any period be more criminal than a needless and improvident exercise of the right in question. On the presiding energy of Government depend all the advantages which polished and

“ought to be continued, when it may be changed with advantage to the community. The family of the Prince, the order of Succession, the prerogative of the Crown, the form and parts of the Legislature, together with the respective powers, office, duration, and mutual dependency of the several parts, are all only so many laws, mutable like other laws whenever expediency requires; either by the ordinary Act of the Legislature; or, *if the occasion deserve it, by the interposition of the people.*” Paley’s *Moral and Political Philosophy*, 6th edition, vol. ii. p. 146.

The Revolution of 1688 was an instance in which the right under consideration was exercised. The proceedings of the Convention Parliament can be vindicated only on these two principles: that the Nation had a right to make such changes in its Constitution as it deemed essential to the public good; even though they should directly affect the then constitutional rights of those of the Royal Family who had broken no compact, but on the contrary were universally acknowledged as the friends and defenders of the people: and that the Nation had authorised the Parliament to exercise that right on its behalf to a very ample extent. In conformity to these principles, after the expulsion of James, who had been guilty of the breach of contract; after the exclusion of the Prince of Wales, who had

or permanent evils which may be likely to ensue. For otherwise, all who should endeavour to accomplish it, though not chargeable with injustice towards the antient Governors, would be most criminal in the sight of God; they would prove themselves inconstant and rash where inconstancy and rashness would be least excusable; risking not only their own happiness, but that of multitudes of their cotemporaries, eventually perhaps that of remote generations of their posterity.

If then it be true of Nations in general, that it is their duty to act with the greatest caution as to the introduction of radical changes into their respective forms of government; and more especially never to resort to their latent right of introducing them against the consent of the existing Legislatures, except in those great emergencies when the public safety and happiness most obviously depend on the national interference; it is an observation which may with peculiar force be applied to Great Britain. For we are not only in possession of a Constitution under which all ranks of subjects have long enjoyed the blessings of liberty
and

and security, of public and private happiness, to an extent rarely if ever experienced in any other country ; but of a Constitution which has provided the means of making essential alterations even in the form of government itself, if ever the Nation should be seriously and permanently convinced of their being necessary.

II. We are now to consider those general duties of Englishmen, which, though they result from the ties by which subjects of the same empire are bound to their lawful Governors and to each other, are either altogether or to a considerable degree incapable of being ascertained by positive statutes. From this peculiarity in their nature, the extent in which they are respectively incumbent on each individual, and the manner in which they may best be performed by him, are points left to be determined by his own private judgement.

Those duties may be comprehended under the single term, Patriotism ; by which term is meant a peculiar affection for our Countrymen, attended

112 GENERAL DUTIES OF ENGLISHMEN

The nations who at the time of the promulgation of Christianity formed almost the whole of the civilized world, were the Jews, the Greeks, and the Romans. They were the nations to whom the new religion was first preached by its Founder and by his Apostles. Of these nations, the Romans eyed all others as their destined vassals; the Greeks despised them as barbarians: the Jews detested them as accursed. To look upon all foreigners with unbridled ambition, with arrogant disdain, and with intolerant hatred, was their patriotism. Their love of their own country was comprised in utter enmity to all the rest of mankind. Was it probable then, I would ask any candid enquirer, that Christ and his Disciples, when addressing themselves to hearers filled with such extravagant and abominable prejudices, would deal largely in exhortations to patriotism? Was it probable that they would deliver even a single *express* exhortation? Would not a teacher, supposing him possessed only of *human* wisdom, who had experienced the obstinate (*r*) reluctance with which

(*r*) To be convinced of the very striking degree in which
the

which the new converts received precepts repugnant to their favourite maxims, who had marked with what assiduity they endeavoured to accommodate the interpretation of them to their rooted prepossessions, have perceived, that any direct instructions which he should deliver to his hearers relative to the proper love of their country, would by them at least, in all likelihood, be forgotten or perverted? And would he not have concluded that the

the twelve Disciples themselves manifested this reluctance, it will be sufficient to read the account given in the Gospels of the manner in which they received Christ's predictions of his impending death, and his promise of a speedy resurrection. The former, if we may judge from St. Peter's conduct, they at first utterly refused to credit; and after they had seen them punctually fulfilled, they remained altogether hopeless of the completion of the latter. "Expecting a victorious and immortal Messiah, they chose, when he spoke of himself as one who was to be taken and crucified, rather to put any meaning, or none, upon the prediction of his death, and consequently of his resurrection, than to understand each in its plain meaning." Secker's Sermons, vol. iv. p. 166. In like manner, from the Epistles of St. Paul we find that the Jewish Christians resisted with the utmost obstinacy the abolition of the Mosaic law, and the admission of the Gentiles into the church.

114 GENERAL DUTIES OF ENGLISHMEN

most effectual method of impressing them and their posterity with just ideas of the import and obligation of patriotism, would be to leave them to the natural influence of a system, which enjoins as indispensable those dispositions of the heart from which the purest patriotism must necessarily flow ; to the effect of those collateral precepts and examples contained in its records, in which the purest patriotism is impliedly recommended and enforced ?

It was this method to which Christ and his Apostles were led by wisdom from above. Our Saviour did not in plain terms admonish men particularly to love their countrymen ; but his whole doctrine and conduct were calculated to inspire them with patriotism purified from the corruptions which had long defaced it. The fundamental principle which he took every opportunity of impressing on the nation to whom his own mission was confined, was calculated to subvert their pernicious and contracted maxims. It was the principle of universal benevolence. He taught the narrow-minded Jew that all men were the chil-

dren of God, and alike dear to their Creator; that the abhorred Samaritan was his neighbour; that the polluted Gentiles, the inhabitants "of the East and of the West, of the North and of the South," were to receive the privileges and blessings of the Gospel; "to sit down with Abraham, Isaac, and Jacob, in the kingdom of heaven." But in the next place, to these precepts of benign and general philanthropy he added, as occasions presented themselves, many special observations and injunctions, partly declaring love towards each other to be the characteristic of his disciples; partly confirming and strengthening, in a manner more or less obvious according to the nature of the circumstances which arose, those previously received laws of morality which inculcated domestic and social affections. Now, though these observations and injunctions had no apparent reference to patriotism, yet they were all designed to enforce the principle from which alone true patriotism is derived, and from the reception of which it must necessarily result; namely, that those, whom any peculiar bond of union connects, are under peculiar obligations to mutual attachment; that

116 GENERAL DUTIES OF ENGLISHMEN

every tie, however slight, which links man to man, forms an additional thread in the band of sympathy. From the precepts of Christ let us pass to his example. Was not the whole period of his ministry a scene of patriotism, manifesting itself in enduring the most cruel usage from his own nation for the purpose of promoting its happiness? His mission, it may perhaps be said, was expressly to the Jews; he could not have shrunk from their malice without deserting his undertaking. Besides, whatever he suffered was not merely for their advantage, but for that of all mankind. Be it so. But did his especial mission to the Jews, or his gracious purposes towards mankind at large, seem to call for the affectionate concern which he felt to his last hour for his ungrateful and malevolent persecutors? Did they call for such pathetic lamentations as we find him repeatedly uttering over the impending fate of Jerusalem? Did they evidently require Christ, after having made one attempt at the risk of his life to convert *his own countrymen of Nazareth*, to return thither a second time, for the same purpose and at the same hazard? Is there nothing in all these transactions of the
spirit

spirit of genuine patriotism? Such was the lesson impressed on the Jews. Let the objector, in the next place, satisfy himself what the Gentiles learned from their great Apostle. Let him hear St. Paul teaching them, that their injustice and fraud were aggravated by being directed against "*the brethren* (s);" and enjoining them to "do good unto all men, *especially* "unto those of the household of faith;" to shew warm and unceasing love in the relations of husbands and wives, of parents and children : thus leading them, in the same manner as Christ had led his hearers, to the principle already stated as the real and necessary source of patriotism. Let him hear the Apostle coming still nearer to a plain inculcation of the duty in question, and solemnly professing, that for the sake of *his brethren the Jews* he could even wish to be anathematized from Christ, to sustain in their stead the temporal judgments of God about to overwhelm them. Finally,

(s) "Nay, ye do wrong, and defraud; and that the brethren." 1 Cor. vi. 8. St. John's direction, "We ought "to lay down our lives for the brethren," 1 John, iii. 16, is also applicable to the point in question. See likewise Romans, ix. 1-3. x. 1, &c. xi. 14, &c.

118 GENERAL DUTIES OF ENGLISHMEN

let him lay together all the facts which have been adduced ; let him estimate their united weight ; and then say whether pure patriotism is not more than countenanced, whether it is not commanded, by Christianity.

The duty being established, it remains to subjoin some brief remarks on the manner of fulfilling it.

The natural and most effectual method by which each individual may evince his love to his country, is by conscientiously striving to discharge, with fidelity and diligence, the special duties of his station ; and by studiously availing himself of those opportunities of promoting the public good, which his rank and occupation in society afford him. The peculiar duties and opportunities of doing good, which attend different stations in life, will be distinctly considered hereafter. The present chapter is designed for observations applicable to British subjects in general.

The greatest benefit which any man can render to his country, is to contribute to the
diffusion

diffusion of religion and virtue, of science and learning, of intellectual and civil liberty, of general tranquillity, harmony, and competence. To attend to these objects, and to each of them in proportion to its relative importance, is the office of patriotism. There is no person who has it not in his power to promote them, in a greater or a less degree, by instruction and example. The latter mode is the more attractive ; it has the advantage too of being at all times attainable, and of being a visible incitement to numbers to whom instruction cannot easily be conveyed. Admonition itself, when thus seconded, has a grace and an energy, which few but the most careless or the most hardened can entirely withstand. Let the man then who loves his country endeavour to render himself and his family a pattern of christian virtue, of useful but unassuming knowledge, of modest and simple manners. Let him exert himself, as far as a fit coincidence of circumstances may enable him, to impress on the hearts of his friends and acquaintance the momentous truths which are near his own. Let him select his companions, as far as may possibly be done, from the good and

the intelligent. Let him be on the watch to stem the increasing tide of luxury and dissipation. Let him be ready to reconcile disagreements, to refute calumnies, to counteract and eradicate prejudices. Let him encourage the virtuous and industrious poor ; and discountenance and seek to reform the profligate and the idle. Let him patronize public institutions which are likely to cherish the spirit of religion, to enlarge the sphere of knowledge, or to dispense useful charity. Let him forward every plan which promises general benefit, though it be attended with some sacrifice of his private interest and convenience. In every way, as far as his ability and influence extend, let him advance the welfare of his fellow-subjects: let him aid them by his advice, let him relieve them by his bounty, let him befriend them by his exertions, let him remember them in his prayers. He who fulfils these duties is a true patriot. He may pass his life in obscurity ; he may have no opportunity of rendering splendid services to his native land ; but the effect of his labours may reach even to multitudes. The brook that flows in silence through the valley, swells the
stream

stream of the mighty river, which diffuses plenty and prosperity over empires.

There is yet one topic remaining, connected with the subject recently considered, on which it may be advisable to make a few remarks; and as they will relate to most of those who occupy the upper and middle classes of society, they may properly be introduced in this place. The point to which I allude is the degree of attention, which persons not immediately engaged in the administration of public affairs ought to pay to the conduct of Government. There are two extremes into which it is not very uncommon for men of this description to deviate. Some from a restless curiosity, some from a meddling spirit of interference, or from a desire to raise themselves into importance in the eye of their neighbours, take a busy and eager part in every public measure, frequently the most busy and eager part in those measures with the drift of which they are least acquainted; and are never satisfied except when they are engaged in the heat of political discussions, in contriving popular meetings, and in the fabrication of resolutions, petitions, addresses, and

122 GENERAL DUTIES OF ENGLISHMEN

and remonstrances. By continually displaying their ignorance in open view, by obtruding on their fellow-citizens their crude and impracticable schemes, they preclude themselves from attaining real political weight. Their censure and approbation, alike ill-timed or misplaced, generally defeats its own object ; their private affairs in the mean time are neglected, and go to ruin ; and while they represent themselves as gloriously sacrificing every thing to the public good, they experience the ridicule, contempt, and dislike, which fall to the lot of visionary and troublesome projectors. Nor is this the worst effect of their absurdity. They bring a general odium and discredit on all popular enquiry into the conduct of the Legislature, on the most salutary species of control which a people can exercise over its deputed rulers ; and thus contribute to rivet others in an error, opposite indeed to their own, but equally prejudicial to the welfare of society. For they who from indolence, from apathy, or from a distaste to political investigations, professedly decline all exercise of inspection and superintendence over the conduct of those to whom the management of national affairs is committed, usually vindicate

vindicate themselves by deriding the blunders and extravagancies of self-constituted politicians. But they are not sufficiently aware of the natural consequences of the supineness which they recommend. No circumstance so effectually deters the Government of any country from involving itself in unjust or pernicious enterprises at home or abroad ; no circumstance so powerfully stimulates it, when engaged in them, to measure back with speed the steps which it had taken ; as the consciousness that the vigilant eye of the people is fixed on all its proceedings. He is the sincere and the wisest friend of his country, who, aware of the fallibility of the most experienced Administration, and of the almost irresistible temptations which are attached to the possession of authority, regards with steadfast though unostentatious attention the conduct of those who manage the affairs of Government ; who gives them every degree of reasonable confidence, makes candid allowances for their unintentional defects, and forbears to weary and embarrass them by interference on trivial occasions ; but who is at all times ready on a crisis of importance, whether it be for the purpose of furthering

124 GENERAL DUTIES OF ENGLISHMEN. .

thering equitable and beneficial undertakings, or of counteracting measures which are iniquitous and impolitic, to give a temperate yet a manly and decided testimony of his opinions, by communications to his Representatives, by petitions to Parliament, by addresses, and, if circumstances require, by remonstrances to the Throne.

CHAP.

CHAP. V.

ON THE DUTIES OF PEERS.

OUR enquiry into the peculiar duties of those classes of society, which fall within the limits of the plan proposed, leads us in the first instance to an order of men elevated above their fellow-subjects by the honours and privileges of Peerage.

It may be proper in the outset to premise a few brief observations, respecting the constitutional purposes which a House of Lords is intended to answer.

At one time we have heard sober argument alleged, to shew the impolicy of investing a body of men with such extensive powers on grounds independent of personal merit; and at another, ridicule has been employed in constructing comparisons between hereditary legislators and hereditary poet-laureats. It is not however difficult to state several very important ends, which this part of the Constitution is calculated

2. The House of Lords is interposed as a bulwark between the Crown and the People; and eventually defends the constitutional rights of both by withstanding the encroachments of either. To this useful line of resistance its members are led by principles inherent in the very nature of Peerage, and therefore promising to be permanent. Their attachment to the Crown as the source of the honours which they possess, and of the further elevation to which they may aspire; and the dread of changes, which may detract from their pre-eminence, but can rarely be expected to increase it, have an obvious tendency to engage them in the defence of the royal prerogatives. These principles however, when considered in a moral point of view, are not the purest; and must be expected sometimes to operate with too strong a bias. Yet this bias will be materially checked in the minds of Peers by the consciousness, that if once the Crown were to extend its authority by trampling on the rights of the Commons, they might themselves be preserved in splendid trappings to gild the pageantry of a Court, and be convened under ancient solemnities and forms to give constrained

strained approbation to royal edicts; but would not long retain the free enjoyment of those functions in which their true dignity is placed, the exercise of legislative and judicial power.

The House of Lords is continually led to perform its office of keeping asunder the monarchical and democratical branches of the Constitution, and preventing the innumerable and perhaps remediless evils which would result from their collision, in a manner singularly advantageous. It usually maintains the balance, not by professedly standing forward in support of the one against the other, but by watching with a careful eye over the preservation of some of its own rights, which are clearly important to the public welfare; and may alternately save the prerogatives of the Crown and the rights of the People from fatal inroads, while it deems itself to be occupied in mere self-defence. Thus both the Crown and the House of Commons may frequently perceive the barriers of their respective privileges strenuously defended without any exertions of their own; and without being reciprocally filled with that disgust and suspicion, or im-

pelled to those animosities and attempts at reprisal, which would inevitably arise were they to find themselves engaged in an immediate contest with each other.

The institution of Peerage likewise tends eventually, by exciting a difference of sentiments and views in different classes of the community, to preclude any private individual from acquiring such predominant influence over his countrymen as to become dangerous to public liberty. Were a Peer to make the attempt, he would scarcely be supported by the confidence and sympathy of the People and their Representatives. And a Commoner who should undertake a similar enterprise would experience the want of personal dignity and splendour, and would be much more likely to be counteracted by the jealousy than to be aided by the co-operation of the Peers.

3. This institution enables the Crown, or, as it may with more propriety be said, the Nation by the discretionary agency of its First Magistrate, to reward men who have distinguished themselves in the public service; and
to

to reward them in a manner the most gratifying to their private feelings, and the least expensive to the country. It contributes likewise, if that is to be deemed an advantage, to cherish in the minds of Peers a high sense of honour. This is a principle, which, when it proves, as on investigation it most frequently would prove, but another name for pride, can expect no praise from christian morality, even if it should chance to produce incidental good. Nor has any man who acts on no better motives reason to feel his conscience at peace. The utmost which those who are most desirous of vindicating the principle can allege is this; that it is one which, however limited and fickle in its operation, however weak in resisting inordinate passions, may occasionally bridle the vices of those whom negligence may have left unacquainted with the restraints of reason and religion, and whom youth and dissipation might otherwise hurry into greater and worse excesses. It tends also to kindle generous emulation, to rouse and diffuse the spirit of patriotic exertions. At the same time it must be allowed, that the good effects of this emulation are in some measure counter-balan-

ced by the envy and discontent awakened in the breasts of those who conceive themselves neglected ; and by the occasional elevation of men, whose promotion seems altogether indifferent, if not injurious, to the public welfare. The former however of these consequences might be obviated to a considerable degree, and the latter entirely prevented, by proper attention on the part of those who select the persons to be raised to the dignity of Peers.

Such are the constitutional usages of the House of Lords ; and they are unquestionably great. An accurate acquaintance with them is an object of the first concern to each individual Peer, and will materially illustrate the general line of his duty.

Yet in common with every arrangement in human society, the establishment of the order of Peers has its peculiar inconveniences. It inclines the mind of each member of the order to adopt and cherish various opinions founded on prejudice ; and subjects him to many appropriate and powerful temptations. These prepossessions and allurements have a natural
tendency

tendency to cloud his understanding, and warp his decisions. They dispose him to take for granted the propriety of erroneous and doubtful principles of action; to be misled in the application of reasonable principles; and to be biassed by the impulse of ambition and interest. They prove equally injurious in their consequences, when permitted to prevail, to his own true happiness and to that of the public.

The passion which strikes the deepest root in the breast of the Nobleman is pride. Raised above his fellow-citizens, he is prone to look down upon them with contempt; and to treat them with repulsive formality, with lofty indifference, or with arrogant condescension. The sentiment of pride is cherished in the hereditary Peer by his recollection of the recorded nobility of his ancestors; in the newly-created Lord, by a fondness for his recent dignity, and an opinion of his personal merit and importance. Hence they are alike tempted to regard themselves, not as public officers invested by their equals, and solely for the general good, with peculiar honours and authority; not as magistrates responsible in their collective

capacity to their country, and possessing functions which the Nation at large retains a right to abridge or annihilate, if experience should ever prove their continuance useless or noxious ; but as holding their legal rights by an indefeasible prescription, never to be questioned under any possible circumstances whatever because it has once been established. Hence too they are liable to be actuated by a secret desire of enlarging the prerogatives of the Peerage, and to look with a jealous eye on the powers enjoyed by the ranks of society inferior to themselves ; especially on the privileges and jurisdiction of the popular Representatives, which they perceive to be more nearly on a level with their own, and feel a continually operative restraint. From the concurrence of all these motives they are apt to entertain an unconquerable aversion to measures which they deem the result of vulgar prejudice ; and frequently permit their love of order (*a*) to degenerate into an indiscriminate opposition

(*a*) This principle, laudable in itself, may be expected frequently to act with too strong a bias on those members of the House of Peers in particular, who owe their dignity
to

opposition to reform and innovation. These circumstances, joined to their attachment to the Crown as the fountain of honour, and their propensity to the splendour and pomp of a Court in which they are habituated to move, will naturally incline them to give every degree of preponderance to the monarchical branch of the Constitution compatible with their own legislative weight. As members of the Legislature, they are under strong temptations to be influenced in their public conduct by views of personal honour and emolument; and are especially exposed to them after having once tasted the pleasure of being elevated from a lower to a higher degree in the scale of pre-eminence. For it is not unknown to those who have opportunities of inspecting the proceedings of persons in public life, that he who is advanced to any rank of nobility is usually to eminence in the Law, or to their stations in the Established Church. For the natural effect of their professions is, to dispose them in favour of every thing which has the sanction of precedent and the authority of ancient custom. And as their advancement to the Upper House seldom takes place until the earnestness and alacrity of youth have subsided; their time of life in general strengthens their disinclination even to moderate and reasonable changes.

more ambitious to be raised a step higher, than a Commoner of distinction is to be created a Peer. And finally, they are not unfrequently seduced by the constitutional permanency of the rights which they possess (a permanency essential to the proper discharge of those functions, and the attainment of those important ends, in which the utility of an order of Peerage consists) to sink into indolence and supineness, and to lose all zeal for distinguishing themselves by meritorious exertions.

A thorough insight into the prejudices and temptations peculiar to elevated rank is no less requisite to a Peer than an intimate knowledge of his positive duties. Neither are these disadvantages to be overlooked by the Commoner, who has the option of a Peerage. For he is bound in the sight of God, while he estimates on the one hand the enlarged opportunities of doing good which he may gain by the promotion, fairly to appreciate on the other the additional danger of contracting blamable habits, views, and dispositions, to which himself, his family, and his connections may be likely to be exposed by his acceptance of it ;
and

and to decide, not from the suggestions of vanity or ambition, but according to the preponderance of those motives alone which Christianity recognizes and approves. Similar reflections, as far as they are applicable, ought to determine the Peer who has the offer of advancement in rank, as to the answer which he gives to the proposal.

The duties which, in addition to the general obligations of British subjects, are immediately incumbent on Peers, relate either to the discharge of their public functions, or to their conduct in private life. Those of the former description may properly be investigated in the first place.

I. The public duties of a Peer, that is to say, the duties arising from his situation as a member of the Upper House of Parliament, afford a wide field for practical remarks. Appointed to watch over the welfare of the realm, and entitled to a permanent seat in its councils, he is bound early to direct his views to the subjects likely to be brought before him, and to furnish himself with information on
the

the great variety of topics connected with national security and national duty. He is to render himself conversant with the fundamental principles of civil society, and of legal government ; with the rights of individuals and of nations. He is to render his mind familiar with the elements of foreign and domestic policy, of commerce, of finance, of jurisprudence ; to investigate the grounds of the system of colonization, and the proper treatment of foreign possessions in their infant, their mature, and their declining state ; to scrutinize the general sources of the prosperity, and the causes of the decay, of empires ; more especially of those which in the form of their internal government, in the manners and dispositions of the inhabitants, or in their relative situation with regard to foreign powers, most nearly resemble his own country. Throughout the whole extent of his enquiries it is his part to unite the conclusions of reason and of experience ; and to illustrate the truth of theoretical principles by references to the histories of preceding ages. His mind being stored with these elementary treasures, he will proceed to apply them to their intended objects. He will acquire

acquire an accurate knowledge of the state of affairs existing at home : he will make himself thoroughly acquainted with the British Constitution, with the offices, powers, connections, and dependencies of its several parts, legislative and executive : he will trace the rise and progress of each ; the alterations which they have respectively undergone ; and the effects, whether beneficial or injurious, which each change has actually produced, or had an apparent tendency to produce, on the public happiness. He will examine the links by which Great Britain is connected with other nations ; and will attend with minute care to the more important treaties of alliance and of commerce by which she is bound. He will mark the origin, the extension, and the existing state of her revenues, of her judicial system, of her military and naval establishments, of her foreign trade, and of her domestic manufactures. He will acquaint himself with her internal police, and with the general state of arts, science, and literature, of manners, morals, and religion. He will attend to the effects which the system of colonization pursued by Great Britain has produced both in

the Mother Country and in the Colonies; and will learn the actual situation of her distant possessions. In these various branches of enquiry he will contrast the conduct of his own country with that of other nations, and observe the result of their different plans. Finally, he will consider in what particulars the laws and institutions of this kingdom may be rendered more conducive to the public good; how they may be made more efficient, if advantageous; how they may be amended or changed, if useless or prejudicial.

Let not the preceding sketch be thought to present an impracticable scheme of laborious study; and rather to express the necessary qualifications of the Peerage at large, than the needful attainments of an individual Peer. It certainly is not to be expected that every member of the House of Lords should prepare himself to enter into all the details, to which each subject of investigation which has been noticed would lead, if pursued to its full extent. But without a comprehensive knowledge of the general principles which each of those subjects involves, and a fund of solid in-

formation respecting them, it will be impossible for a Peer to fulfil his duty in deliberating and deciding on the numerous and complicated measures which are necessarily to come before him. The effects of being master even of a few of the articles already specified, would be such as might well encourage further application. An hereditary seat in the Legislature is so far from being a situation which ought to repress industry and exertion; that were a Nobleman to take proper and timely means of employing his abilities, of what sort or strength soever they might be, he would find his pains rewarded by a greater addition of reputation, of consequence, of power to do good, of advantages of every kind, than would be attainable by equal efforts in any different line of life, the other House of Parliament only excepted. A Peer who consults the satisfaction of his own conscience will acquire a more than superficial acquaintance with every object which falls within the province, and is likely to be brought under the cognizance, of the House of Lords. But his views will be more closely fixed, and his exertions more strenuously employed, on those select pursuits which

which his profession, his peculiar talents, the bent of his disposition, his opportunities of gaining intelligence, his local situation, or any adventitious circumstances, entitle to preference. The pilot will strive to gain a general knowledge of the creeks and shoals in every channel which his office may occasionally oblige him to navigate ; but he will be chiefly attentive to the soundings between those particular harbours, which his business usually leads him to frequent.

The Nobleman who has the laudable industry to possess himself of these acquisitions of knowledge, will not despise or overlook an attainment indispensably requisite to their full lustre and utility, the talent of public speaking. This talent is to a certain degree original : unless strong and ample foundations have been laid by the hand of nature, a splendid superstructure cannot be raised by the utmost efforts of art. Yet there are few so sparingly endowed with the powers of elocution, as to be incapable of qualifying themselves, by persevering and judicious endeavours, to deliver their sentiments in debate with facility and effect.

effect. And there are none, however eminent for natural abilities, who may not derive from study and reflection the most essential aid in attaining to that self-command; that enlarged conception of the subject under discussion; that methodical view of its several parts and bearings; that manly copiousness of expression; that fund of brilliant and apposite imagery; without which the soundest reasoning may be devoid of perspicuity, of energy, and of grace, and fail to carry conviction to the breast even of the most unprejudiced audience. A frequent and contemplative perusal of the works of the ancient masters of oratory, and of those moderns who have been the most distinguished for convincing the understanding and interesting the passions; attention to their mode of arrangement, to their choice of arguments and illustrations, and to their skill in adapting the style as well as the matter of the discourse to the subject on which they spoke, and the persons whom they addressed: these are the methods to be pursued by the parliamentary speaker, if he seeks to tread in the steps of his illustrious predecessors; much more if he aspires to produce impressions on his hearers

similar

similar to the wonders wrought by eloquence in classic ages, and to equal the monuments of Grecian and Roman fame. But let him beware of being betrayed into an affectation of system and a pedantic display of learning; let him not suffer the love of applause to occupy his breast instead of the desire to do good. Nor let his attainments in oratory, whatever they may be, lead him into the habit of pragmatically obtruding his sentiments on the House at inopportune seasons; with more frequency than his situation justifies; or with greater prolixity than the subject under discussion requires. Repeated instances have occurred of parliamentary speakers, who by inattention to these circumstances have given permanent disgust to their hearers; have essentially lowered themselves in the public estimation; and have radically impaired their power of benefiting their country.

It sometimes happens even in the Upper House of Parliament, though much more frequently in the Lower, that a young man of abilities, soon after he has taken his seat, makes his entry on the stage of debate in a prepared
 ● speech

speech of very considerable length. Yet, except under circumstances extremely peculiar, this method of proceeding must be pronounced injudicious; both as being little accordant with the ingenuous diffidence of youth, and calculated rather to procure to the speaker some premature and transient applause, than to pave the way for his attaining and permanently enjoying the well-earned praise of eloquence. The imputation of vanity and presumption will almost inevitably attend him. And however disposed his hearers may be to make reasonable allowances for these failings, the impression which each of them produced will revive in their minds as often as the memory of the oration recurs. If he exhibits (and where is the young man who is not in danger of exhibiting?) some deficiency of judgement or of information; he so far defeats the very purpose which he has in view. If he acquits himself according to his own sanguine wishes, a large deduction from the credit which he expects will be secretly made by the audience, prone to ascribe no extraordinary merit to a formally premeditated and laboured harangue. If he opens the debate,

this defalcation will be carried to its utmost extent. If he rises at a later period, he has more than common good fortune, if his arguments have not already been in some degree anticipated and refuted. Add to these considerations the envy and the consequent aversion likely to be excited by his success in the breasts of other members of the House, jealous of being outstripped or equalled by a youthful, and, as it should seem, a self-important and ambitious competitor. The elated orator in the mean time construes in their literal acceptation the hyperbolical compliments bestowed by the partiality of his friends, and the encouragement which he receives from the candour and liberality of the House, willing to cherish the first efforts of promising abilities. Hence he contracts an overweening opinion of himself; and a disdain, not easily subdued, of taking an unostentatious part in those common discussions, which, while they present many opportunities of doing good, and the best opportunities of acquiring a real knowledge of business, afford little room for a brilliant display of talents and elocution. He fears that he shall degrade himself from what
he

he deems the height of acknowledged reputation and pre-eminence, if he descends to the level of vulgar concerns, and takes a part in matters capable of being conducted by men of ordinary faculties and attainments. Or, conscious perhaps that by his outset he has raised expectations which he is unable, or too indolent, to answer ; he scorns to occupy a rank in the scale of public admiration one step lower than that to which he originally laid claim, deserts the unalluring sphere of usefulness, and proudly sinks into permanent silence and inactivity. Whatever powers of language may be originally possessed, it is with the art of public speaking as with all other human acquisitions : genuine excellence eludes our grasp, until it rewards the attention of experience and the persevering diligence of practice. Let not the impatience of youth strive in early spring to rival with forced and unripened imitations the glowing fruits of autumn. Instead of arrogantly ranging himself as an equal by the side of the leaders of the House, and challenging with rash defiance a contest with the veterans of oratory, let the new debater confine himself to familiar topics of discussion ; rising when he

is impelled by the nature and course of the business, and is sufficiently master of the subject, and delivering his sentiments with unassuming simplicity and conciseness. It is thus that, acting with modesty suited to his recent parliamentary existence; not embarrassed by consciousness that a long and studied oration is expected from him; attracting no rigorous observation, rousing no prejudices, exposing himself to no obloquy and suspicion; gaining unreserved credit when he excels, and losing little though he should chance to fail; he will lay the groundwork of future eminence in a continually increasing reputation for judgment and knowledge: and gradually advancing, as he feels his strength augmented by exercise, and his talents called forward by general favour, into the foremost ranks of debate, he will obtain that honest distinction, and that power of benefiting his country, which the flashes of eager ostentation could not have permanently secured, and might have prevented for ever.

While the Legislator is earnestly engaged in augmenting the treasures of his mind, let him

remember that their proper application depends solely on the disposition of the heart. It is there that he is to fix that resolute and stubborn sense of duty, which may fortify him against the attacks of vanity, selfishness and ambition, the partial solicitations of friendship, and the overwhelming influence of false shame; and may even supply to a certain degree the place of a superior understanding, by relieving his judgement from the bias of those culpable motives and prepossessions, which frequently prove the sources of erroneous conclusions. In order to preserve this principle at once pure in itself and efficacious in governing his conduct, let him resolve from the first moment of his outset in public life to shun the snares of party. Let him be studiously select in the choice of his political acquaintance, and beware of contracting intimacies with persons who profess themselves, or who are known to be, determined partisans. Let him steadily guard against being deluded by the flattering civilities and studied notice of the leaders of a party; or by any of those lures which the retainers of a party commonly throw out with equal diligence and

cunning to young men entering into public life. (b). Let him learn to detect the hackneyed sophism, by which he will hear the sacrifice of every upright motive palliated and recommended ; that a concurrence of many is necessary to the success of every plan ; and that no man can expect the aid of others without being ready to make reciprocal concessions and compliances. Let him tell those who urge it, that to co-operate is not to be a partisan ; that co-operation asks no concessions but such as are consistent with morality and religion ;

(b) In some of the ways alluded to, the great political clubs, of which any existing party has commonly one or more attached to itself, do very great mischief both to individuals and to the public. There are other most serious evils with which these and similar clubs established in the metropolis are chargeable ; evils which may extend to all who belong to the club, whether political men or not. I refer, not only to the opportunities and encouragement furnished to gaming and other gross vices ; but to the prevalence of a system of expensive luxury and sensuality, which is found to produce habitual estrangement from domestic intercourse and comforts ; habitual dissatisfaction with all society, in which gratifications corresponding to those of the club-room are not attainable ; and a gradual cessation of familiarity with former friends who are too wise to afford them.

that

that party requires her votary to violate, either expressly or impliedly, the dictates of both ;—to affirm what he believes to be false ; to deny what he knows to be true ; to praise what he judges unwise ;—to countenance what he deems reprehensible. Let him explicitly make known to those with whom he co-operates in political undertakings, that he is an independent friend, who will support them in every measure which he shall think equitable in itself, and conducive to the national welfare ; not an articulated confederate, pledged to concur in proceedings which his judgement or his conscience disapproves. Let him guard with scrupulous vigilance against rashness in contracting political obligations by a precipitate acceptance of offices or honours. And whenever cool reflection induces him to receive a post of employment, or personal promotion, from the leader who dispenses the favours of the Crown ; let him not forget that sincerity requires him not to leave the donor or the public under mistaken ideas of his having engaged to make that return, which prevailing custom may have taught the one regularly to expect, and the other to behold without surprise.

pride. A disregard of these precautions has made many men criminal, many suspected, and many unhappy. The evil too, though it may be prevented, is frequently incapable of being remedied. The man, who has been advanced in rank, cannot reduce himself to his ancient level. An office may be resigned; but the character may have been stamped by the mode of obtaining it. The burthen may be shaken off; but the marks which it has impressed may remain for life.

It is a prevailing complaint, that few Peers who are not invested with offices, nor candidates for them, are sufficiently sedulous, except on particular occasions, in their attendance at the House of Lords. This circumstance ought to operate as an admonition on each individual member. And the possession of a permanent seat, while it secures a Nobleman from incurring by neglect the forfeiture of his station, will prove on that very account, to a generous mind, an incitement to diligence.

The public functions of a Peer are twofold; those of a Legislator, and those of a Judge.

Judge. In the former capacity, it is his business to promote the glory of God by endeavouring to promote the true happiness of this Nation, and that of other nations as far as it depends on the conduct of this. In the latter, by an attentive examination of the case brought before him, and an impartial adherence to law, or, where law leaves him undirected, to substantial justice, in his decision.

In all public measures which have an evident bearing on the happiness of foreigners, regard is to be paid to those principles of justice and benevolence which ought to be observed in transactions between individuals. In the eye of Christianity, all men are brethren; in that of upright policy, nations are individuals to each other. The conscientious Legislator will feel the same abhorrence of involving Great Britain in a war on any other grounds than those of indispensable self-defence, or of affording stipulated protection to allies, or welcome succour to the oppressed, which would strike him at the idea of embroiling his own hands, through self-interest, rancour, or revenge, in the blood of a fellow-

fellow-subject. During the course of the most prosperous hostilities he will at all times be anxious for peace, on any terms which would afford a reasonable compensation for injuries received, and a reasonable prospect of future security. And if this country should be enabled, by the blessing of Providence on her arms, to reduce the enemy to submission, he will warn her to listen to the voice of Christian charity ; “ to do as she would be done by, to love her “ neighbour as herself,” and to relax, as far as prudence will permit, those rigid conditions which strict right may entitle her to impose. In the consideration of treaties of alliance with other powers, he will steadily resist every clause which apparently may be the means of engaging his own country in the support of an unjust war, or in the prosecution of a just war to unreasonable extremities. In discussing treaties of commerce, he will not act for Great-Britain on the narrow principles of a tricking agent ; but, conscious of his duty to do good to all mankind, he will recommend that mutual communication of advantages which may cement the friendship, and excite and reward the industry, of both the contracting parties.

parties. He will not promote trade at the expence of morality. He will not consent in behalf of his country to any proposed regulations, in consequence of perceiving that they would enable her to spread her manufactures by smuggling. In framing laws which relate to the distant possessions of Great Britain, he will consider himself as the common guardian of the mother country and of her dependencies ; and bound to consult the welfare of *all* the inhabitants of the latter, whatever be the hue of their complexions.

In determining, on the grounds which have already been explained, the measures to which he shall direct his principal attention ; he will be solicitous to include those in the number which are at once important in themselves, and not likely to be undertaken by others. Of this description are various political investigations, which are attended with much labour and little popularity. He will make it his object to obtain not only the redress of those grievances, and the reform of those abuses, which result from the operation of general principles ; but of those also which originate
in

in the partial or perverted effect of a particular law. He will be guided, in the motions which he brings forward, by his opinion of their usefulness or necessity. He will regard the applause which he may receive, or the odium which he may incur, no further than as the one may contribute to promote, or the other to impede, his power of rendering future services to his country and to mankind. He will not shrink from proposing the restraint or the surrender even of one of the privileges of his own order, if its continuance in its present extent, or its continuance at all, appears in his opinion inconsistent with the public good. Whatever measures he may suggest, he will accommodate them, as far as reason and the nature of the intended object will admit, to the sentiments of those on whose concurrence their success may depend ; and will strive to frame his proceedings in such a manner as may ensure to him, if he should fail to attain the end which he principally desires, the accomplishment of that which is next to it in point of eligibility. He will not aim at taking the lead where he can be of more essential use by giving subordinate assistance ; nor endanger

danger the reception of a plan by exposing it to the effect of prejudices, which might lie against himself as the introducer of it.

In appreciating the measures introduced by others, he will be actuated by motives no less pure and conscientious. He will warmly support such as he deems laudable and useful, and strenuously resist those of the contrary description, whether brought forward by Ministry or by their opponents, whether proceeding from a popular or from an unpopular side of the House. He will not suffer his conduct respecting private Bills to be determined by personal favour and personal solicitation; nor, if he is himself interested in the fate of the inclosure, the canal, or the turnpike road, will he resort to those improper modes of influence, or act on those selfish motives, which he would have disapproved, had he been an unconcerned spectator of the contest. He will not concur in augmenting the public revenue by means of laws which are oppressive or unfair in their operation. He will not fill the treasury (c) at the expence of national virtue. In
deciding

(c) On this ground Lotteries appear highly objectionable;

deciding on the conduct of the executive officers of the Crown, he will be guided neither by hopes nor by fears, by attachment nor by aversion. He will discountenance the prevailing maxim of estimating the merit of their operations by the event; not merely because the wisest plans may be disconcerted by accidents, and the most inconsiderate crowned with undeserved success; but because the most politic and beneficial end may have been ob-

able; and all Bills which render perjury more frequent by the multiplication of unnecessary or improper oaths; or which encourage smuggling, and oppress the honest trader, by imposing high duties on commerce or manufactures, in cases where fraud is easy and obvious. Among the advantages of freeing trade from all needless restrictions, the number of oaths saved is perhaps the most important. The scandalous violation and evasions of oaths taken at the Custom House can scarcely be described. And it may not be improper here to add, that the total disregard shewn by Churchwardens to parts of their oath, the injunctions of which will never be obeyed in the present state of manners and society, loudly demands the interposition of the Legislature. In the successive execution of this office, almost every man above the rank of a day-labourer in every parish of the kingdom learns to consider the strongest sanction of truth as a nugatory form. Let the effects, both in a civil and religious point of view, be estimated by those who have it in their power to remove the cause.

tained

tained by means which in the judgement of honest men should consign the agent to infamy. From the same scrupulous regard to the general interests of morality, he will be invariably solicitous, while he gives to Ministers that degree of confidence which he deems their situation to require, to have each of their proceedings with foreign powers brought as early and as distinctly before the public eye as the national safety will permit. Ministers have the common infirmities and the common feelings of men. Those who are actuated by the most commendable motives will be more on their guard against the failings to which even the best men are liable, when they know that their whole conduct is closely inspected. Those who are proof against the secret calls of virtue may be restrained by the fear of detection. It is the dusk of evening, or the obscurity of solitude, which sends forth the petty plunderer to his depredations ; and guilt acts on the same principle in all classes of society.

When a conscientious member of the House of Lords engages in parliamentary debate, he will advance no arguments in support of his
 opinion,

opinion, but those which sincerity justifies him in maintaining. He will not conceive himself universally bound to produce those reasons which have the strongest influence on his own mind, if he apprehends that they would so far shock the prejudices of others as to endanger the success of the measure proposed, or that the avowal of them would involve the disclosure of political circumstances, which for the sake of public good ought at the moment to be kept secret. But he will not urge the adoption of it without either alleging such grounds as in his own judgement render it advisable; or such as he thinks render it advisable on the principles prevalent with those whom he addresses. In the latter case, however, he will not delude his hearers by giving them cause to believe that the reasons which he brings forward are those on which his own determination relies. He will contend with the candour and openness of a man anxious for the discovery of truth and the promotion of general good; and will conscientiously avoid the artifices and exaggerations, which belong to the interested defender of a favourite scheme. He will avail himself of all fit opportunities of
 avowing

avowing without obtrusion the (*d*) general principles which he holds on the subject under discussion, when it is a subject of moment, or on others nearly allied to it. He will give every degree of reasonable weight to the arguments, and of reasonable credit to the motives, of his opponents. He will check in himself, and study to repress in others, every ebullition of party spirit; and will habituate himself to censure without acrimony, to refute without loss of temper, and to

(*d*) Such an avowal is productive of the most beneficial consequences, both immediately and in the way of example. It tends to lead the speaker and the auditors to consider subjects on an enlarged and comprehensive scale, and to a certain degree detached from the prejudices and circumstances of the moment. By exciting attention to fundamental principles, it places their excellence, if they are just, in a clearer light; if false, it obviates the danger of men being surprised into a compliance with them. It likewise gives that publicity to the character and tenets of a Legislator, which affords the greatest satisfaction to his country, and has the best effects upon himself. Few circumstances have a more reasonable tendency ultimately to deprive persons in political life of public confidence, than their suffering themselves to be led by the heat of contest or the pressure of difficulties to speak lightly of general principles, and to profess to be guided entirely or chiefly by the incidents of the moment.

feel himself victorious without pride or ostentation. He will not be ashamed to retract with manliness what he has erroneously asserted; to acknowledge any change which further thought and information may have wrought in his views, either of the measure which he had countenanced, or of the distinct grounds on which he had conceived its propriety to be established; and will not be deterred, by the fear of being reproached as inconsistent, from confessing that he was less wise yesterday than he is to-day.

A considerate Nobleman will make a very sparing and cautious use of his privilege of voting in his absence by proxy; and will be scrupulous in receiving the proxy of another Peer. Indeed, the idea of a person giving his vote in the decision of a question which he has not heard debated, and may never have considered; in enacting or rejecting a Bill with the nature and object of which he is unacquainted; at a time too perhaps when he is in another quarter of the globe, and unable to learn the present posture of affairs and circumstances either at home or in the rest of Europe;

tope; is so plainly repugnant to common sense; is capable of being so easily and grossly perverted to the manœuvres of private interest or of party; and so nearly resembles the Popish plan of putting one man's conscience into the hands of another; that the surrender of this privilege would apparently be at once honourable to the House of Lords, and beneficial to the Nation.

It has long been the practice of the House of Lords to be guided in pronouncing judgment in cases of appeals by the opinion of a few Peers eminent for their knowledge in the law. To the learning, experience, and integrity of Noblemen so circumstanced peculiar deference is unquestionably due; yet it seems to be carried beyond its proper bounds, when it permits the silent rise and progress of an opinion, that a Peer not belonging to that profession, who shall take an active part in such deliberations, oversteps the limits of his province. It appears highly desirable that a considerable number of Noblemen should be qualified by an acquaintance with the general grounds and principles of evidence, and a par-

ticular study of those branches of the legal code most frequently involved in the disquisitions which come before the House, to appreciate with accuracy the several arguments of the Counsel at their Bar, of their own professional Members, and of the Judges summoned to assist them. By these means, not only the collective mass of wisdom exercised in the decision would be enlarged ; but additional security would be obtained against those misapplications and abuses, to which power, when lodged in the purest hands, may sooner or later be seduced, if it shall cease to meet with superintendence and control.

Such are the public duties of Peers in general. On those of particular descriptions peculiar obligations are incumbent. Proposals for the improvement of the Marine come with singular propriety from the ennobled Admiral. The cause of the Soldier is best pleaded by the Commander, who has earned his seat in the Upper House by military services. Amendments in the civil, criminal, and judicial system are chiefly expected, and most favourably received, from the dignified Lumina-
naries

naries of the Bar. And to those who are elevated at once to pre-eminence in religious functions, and to the privileges of Peerage, the Nation will look for plans for the elucidation of the scriptures, the amendment of morals, and the suppression of seminaries of vice ; for the establishment of new institutions for the instruction of the poor, and the improvement of those already existing for the rich ; more especially as far as they involve the education of persons destined for the clerical profession.

II. A few observations on the duties of Peers in private life remain to be subjoined.

While the Nobleman guards for his own sake against those temptations to overbearing manners, and an ostentatious mode of living, to which his elevated rank, and the ample property which commonly attends that rank, render him particularly exposed ; and more especially against such of those temptations as derive an accession of force from his own temper and turn of mind, or from any adventitious circumstances ; let him

M 3 constantly

constantly recollect the power which he possesses of influencing the conduct and manners of others. Next to the example of persons allied to the Monarch on the throne, that of the Peer is the most alluring and efficacious. It diffuses its effects not merely among those who are admitted to his society and to his table ; but is propagated from one knot of imitators to another, and spreads through the adjoining country far and wide. The pattern which he exhibits has a prevailing influence in deciding whether vanity and pride shall be deemed honourable, or disgraceful ; whether the tide of extravagance, luxury and dissipation shall be quickened, or retarded ; whether useful plans and institutions shall meet with countenance, or neglect ; whether industry, morality and religion shall flourish, or decline ; whether unassuming merit shall be encouraged, or its recompense be intercepted by shameless ignorance, and accommodating, perhaps brilliant, vice. Viewing all his own proceedings in this light, let him be careful, and not for his own sake only but for the sake also of society, that the influence of religion be not diminished by his example ; and diminished it will

will be, if he is negligent and irregular in his attendance on public worship; if he employs the sabbath in needless journies, or surrenders it without urgent necessity to the hurry of visits abroad, or of company at home; much more if he abets the growing fashion, a fashion unknown till of late in this country, (*e*) of giving up its evenings to routs and musical entertainments. If he thinks proper to have a clergyman reside in his family, either as chaplain, or in any other capacity; let the person

(*e*) The modern concerts termed *sacred* appear by no means to deserve an exception. If they consist, as is said not unfrequently to be the case, of common music interspersed for the sake of decorum with a sparing mixture of sacred performances, the intention and the effect of them are equally obvious. And supposing them to be really and altogether what they profess to be, they will in few cases excite religious impressions sufficiently strong to repay the hearers for the interruption of those Sunday evening occupations, which might otherwise have taken place at home; while the servants of all the parties, instead of being left at leisure for religious employments, are occupied precisely as on a common visiting day. And the lower classes of the people, who do not make refined distinctions, will conceive their superiors to be in pursuit of their amusements on the Sunday as during the rest of the week; and will thence learn to indulge themselves without scruple in their own.

be selected for qualities which besit a minister of the gospel, and be treated uniformly in a manner becoming his profession. Let the Nobleman avoid all culpable facility in the exercise of his right of nominating chaplains; and when he bestows the title, whether as a mark of his favour or as a step to preferment, let him be careful that it be conferred only on such men, as he ought to distinguish by his countenance, or contribute to promote. Let his mode of life, while suited to his place in society, be under the control of an unfeigned spirit of moderation. Let him chase away the swarm of servile *bangers-on*, who delight to bask in the sunshine of Nobility, and to fasten on rich and powerful patrons; who search out the weak side of the man by whose bounty they are fed; and, inwardly despising while they would be thought to adore him, are ready to flatter his defects, to applaud his absurdities, to minister to his vices, to submit to the most ignominious and disgusting offices and compliances, in the hope of being rewarded with civil, military, or ecclesiastical preferment. Shunning the contagion of such associates, let him cultivate a familiar intercourse with men,

from

from whom he may derive knowledge and information which may enable him to act with greater usefulness in his public capacity as a Legislator. The same pattern which from conscientious motives the master of the family displays in his own behaviour, habits, and pursuits, he will assiduously impress on every member of it. Not only in the common course of his proceedings, but even during the urgency of political occupations, let him consider the bosom of his family as designed to be the scene of his purest delights; and set his face against the present system of modish life, which renders the wife and the husband as it were strangers to each other. Separate habits, separate establishments, separate sets of acquaintance, gradually lead to separate pursuits, inclinations, and interests. The ties of domestic intercourse are broken; connubial affection declines; principle may remain, but fondness is gone; and when indifference or disgust has taken the place of fondness, principle has lost one of its most powerful collateral supports. Nor is this all. Parental regard decays, and parental duties are forgotten: the children, committed to uninspected teachers, hear little

little from either parent but censures of the other, and thus are trained in the habit of despising both ; and learn betimes to consider the marriage state as a state of vexation, or at least as one in which the permanence of mutual love would be thought of by none but those who are ignorant of the world. These evils are not confined to the Nobility ; they extend to Commoners who move in the same fashionable circle. They are noticed in this place, partly because they attach chiefly on the Nobility ; and partly because the influence of persons in that class is peculiarly adapted either to encourage or to check their progress. In the partner of his honours and of his influence the Nobleman will find, or he will strive to create, a partner of his laudable views in domestic life, and an assistant in carrying them into effect. He will inspire his children from their earliest youth with a love for the same virtuous principles which guide his own actions ; and by a judicious choice and solicitous observance of the instructors to whom the care of their education is committed, and by a truly paternal attention to their conduct when first introduced into the world, will train them in

those studies, and lead them betimes to those attainments, which may qualify them to fill their destined stations in society with advantage to their country, and inward satisfaction to themselves,

CHAP. VI.

ON THE DUTIES OF MEMBERS OF THE
HOUSE OF COMMONS.

THE principle of Representation, though too obvious to have been altogether overlooked by the Republics of antiquity; and though occasionally adopted by them (*a*) in their transactions with each other as independent communities; does not appear to have been established as a part of their internal Constitution. In the infancy of their power, the smallness of the number of citizens, and the contiguity of habitation essential to their security, enabled them to collect together for public deliberation without inconvenience. In process of time, when, from the increase of population and the extension of territory, the mass of freemen swelled to a larger and a still larger size; when the confusion, the prejudices, the venality, the

(*a*) As in the Council of the Amphyctyons.

rashness,

rashness, the sudden panics, and the frantic tumults, incident to democratic assemblies, joined to the interruption of industry, the stagnation of commerce, the jarring of private animosities, and the fury of civil broils, shook the state to its foundations; it would have been fruitless for any patriot, however conscious of the rapid and alarming progress of the poison, to have proposed the genuine antidote. The man who had dared to exhort the turbulent multitudes absorbed in the prosecution of political contests, and exulting in the daily exercise of legislative power, to divest themselves of their authority, and commit it to the hands of deputed representatives, would either have been torn in pieces by their hasty rage; or would have escaped their immediate vengeance only to have been driven by ostracism into perpetual exile, or to have been hurled from the Tarpeian rock.

But in England, when the commonalty, during the contentions of the Sovereign with the Barons, and the conflicts of rival pretenders to the Throne, had gradually acquired such weight in the national scale, as to assert a constitutional

174 ON THE DUTIES OF MEMBERS

stitutional right of forming an independent branch of the Legislature; the situation of the people was almost entirely opposite to that of the Citizens of Athens and of Rome. A long course of royal and aristocratic oppression had superseded the convocation, and perhaps extinguished the memory, of those general assemblies of the Nation, which appear anciently to have been established in this country as well as in the other (b) parts of Europe by the victorious invaders of the Roman Empire. The principle of representation therefore had not to contend with the violence of popular prejudice and ambition. And the operation of a particular cause insured its introduction and establishment. The influence which had been gained by the commonalty was not an influence equally distributed among the people at large; but was principally if not exclusively

(b) See the account given by Dr. Robertson of the annual assemblies of the French, denominated from the place and time of the meeting "Les Champs de Mars & "de Mai," and of the corresponding assemblies of the Germans, and of "all the barbarous Nations" of Europe. History of Charles the Fifth, vol. i. p. 432, 433; 197; 463.

concentred in those detached bodies of individuals, who were collected in cities and towns. These attracting the notice of the Monarch, partly by their wealth, partly by their union and collective strength, easily obtained in succession the privilege of sending deputies to meet him in his Parliament, both to defend the interests of their constituents, and to co-operate in making laws for the Nation.

The grand object to be pursued in forming a Representative Assembly is, to provide that it shall have an identity of interest with its constituents, and shall express their general and deliberate sense of public measures. On the observance in a due degree of these essential and vital principles, the utility of the House of Commons, as a body of Representatives of the People of England, radically depends. To secure or to revive the purity and vigour of these principles is the destined object of the periodical recurrence of elections; of the royal prerogative of dissolving Parliament at any time, of Bills for the exclusion of placemen, pensioners, and contractors from seats in the House of Commons, and of certain classes
of

of men, as officers of excise, from the rights of electors ; and has been the professed design of all the plans which have been proposed for parliamentary reform. And the great purposes of the Representative institution have been alike abandoned, when the House of Commons has been induced tamely to surrender the rights which it was deputed to maintain ; and when it has assumed powers to itself committed to the other branches of the Legislature. They were alike abandoned when it assigned to the proclamations of Henry the Eighth the validity of laws ; and when it extorted from Charles the First the privilege of not being dissolved without its own consent.

Our immediate concern is with the duties of individual Members of Parliament. The proper discharge of them however so closely depends on a thorough knowledge of the leading constitutional purposes which the House of Commons is formed to answer ; that a summary account of those purposes, far from being foreign to the present plan, seems necessary to render it useful.

1. The

1. The equilibrium of the Constitution under which we live, like that of the frame of the planet on which we dwell, is preserved by the reciprocal action and counteraction of its component parts. Were either of the elementary branches of the Legislature to invade the rights of the others, it would experience a determined resistance from their combined and countervailing exertions. The House of Commons, by a suitable exercise of the powers with which it is invested, performs its part in the important office of supporting the balance of the Constitution. The peculiar service required of it is to communicate and carry into effect the national will; and industriously to repel every attack, whether open or disguised, which may be directed against public liberty. The mode in which it repels encroachments, either of the Crown or of the House of Lords, on the rights of the People, varies according to the circumstances of the case and of the times. When emergencies have required open resistance, the House of Commons has not shewn itself disposed to shrink from actual contest. But, in the common train of events, it effectually secures the object in question by the less irritating, and therefore the more salutary,

method of silently supporting its own privileges, and exercising without interruption or abatement all its customary functions. And when engaged in the constitutional defence of popular freedom, it is equally a bulwark to the Sovereign and to the Peerage. For, by precluding those branches of the Legislature from attaining to exorbitant authority, it prevents the danger which each would incur from the predominance of the other; and will in most cases give timely aid to the weaker party, lest it should itself have to encounter in the victor a formidable assailant of its own rights, armed with a double share of power, and flushed with recent success.

2. The institution of a House of Commons ensures almost to every inhabitant of the realm an opportunity of making known his grievances to a tribunal, which is competent to provide for their redress. If the evil of which he complains be real, and of any considerable magnitude in the general estimation; whether it arises from the absence, from the inefficiency, or from the abuse of positive law; it is nearly certain that some Member of Parliament will be influenced either by laudable or by reprehensible

hensible motives, by the impulse of duty, of benevolence, of compassion, of patriotism; or by selfishness, by resentment, by vanity, by party spirit, or even by the mere inquietude of a busy disposition, to bring it forward into public notice. It is true, that the other House of Parliament also is open to the petitions of the subject. But the close connection which subsists between the House of Commons and the People, and the intercourse which the members maintain directly with their immediate constituents, and indirectly with those who are not electors through the medium of those who are, gives a peculiar facility of access to the representations of private individuals, and a peculiar prospect of their being as powerfully supported as they deserve.

3. This branch of the Legislature also furnishes the means of patient and safe discussion of political grievances and popular discontents, before they are grown to such a magnitude as neither to be tolerated with safety to the State, nor removed without the risk of dangerous convulsions. The beneficial effects of a Representative House of Commons in

advantage, and too inveterate to give quarter if successful, contributes to deter Ministers, by motives of personal consideration, from embarking in pernicious or hazardous schemes; and especially from unnecessarily involving their country in wars, which furnish peculiar opportunities of enquiry and accusation to their antagonists, at a time when their own powers of defence are crippled by the reserve with which they are obliged to speak on the state of public affairs, and projected military operations. The same motives will incline them to terminate the contest whenever reasonable conditions of peace can be obtained. Thus happily does the institution of the House of Commons abate the fury, both at home and among foreign nations, of the severest scourge of the human race.

Nor is the force of this commanding superintendence confined to the leading Members of Administration. The Judges, the Officers of the Army and Navy, in a word, all who occupy posts in any department of the State, are conscious that, perhaps before another day passes, their conduct may be brought under parlia-

parliamentary discussion, and probed in its most minute and tender parts. This rigorous inquisition will be dreaded, even in those cases in which the House of Commons has not the right of following it by the infliction of punishment.

To these benefits may be added other analogous advantages. The Members who are not invested with official employments are stimulated to exert to the utmost their several talents, and to contend in acts of disinterestedness and patriotism, not only by being witnesses of the conduct of each other, but by the recollection that they are performing their part on a public stage, as it were before the eyes and within the hearing of the whole Nation. Latent powers are called forth; scope is afforded for the exercise of abilities of every kind; the way to the highest political eminence is open to all who are worthy of attaining to it, though undistinguished by personal wealth or rank, though originally unsupported by powerful connections. The House of Commons too, by receiving into its bosom persons of every profession, confers honour on

all liberal occupations; and destroys that odious and degrading barrier which in despotic countries keeps asunder the different classes of society. By admitting the Merchant, it ennobles trade; by giving access to the Soldier, it fixes and retains him a Citizen.

5. Among the most important services of the House of Commons may be reckoned the influence which it has in forming the national character. By the active discharge of the functions entrusted to it by the Constitution, and by the publicity of its debates, it diffuses a spirit of political enquiry; turns the general attention from frivolous employments to rational and manly pursuits; and teaches the people of Great Britain to inspect, and to judge of, public measures, to know, to value, and to defend their rights.

The conciliating intercourse which periodically takes place at elections between the candidates and their constituents, together with the connection which continues to subsist between the Members of Parliament and those whom they represent, and between affluent
men

men not in Parliament, and the electors with whom they wish to have weight, corrects the prejudices, and alleviates the incidental vexations and evils, which will unavoidably result from the distinction of ranks in the community. The poor indulge the elating idea of political importance; and the rich feel themselves obliged to solicit and to receive the possession of their darling object at the hand of their dependents. It is to the want of an intimate and necessarily recurring communication between the higher and lower orders of society, and of a reciprocal sense of obligations conferred and received, that we are to ascribe the overweening pride of the Nobles in many of the kingdoms on the Continent, and the abject humiliation of their vassals. None perhaps but they who have been eye-witnesses can duly estimate the effect wrought on the human mind by an uninterrupted consciousness of dignity, power, and wealth; or by an unvaried sense of poverty, weakness, and depression.

Such are the honourable and useful offices in which every Member of the House of Commons bears a part. We are now to examine

how he may most faithfully and effectually discharge the duties which they impose on him.

The subjects which come before the House of Commons have so close a resemblance to those which are debated in the House of Peers (the bills and motions submitted in their turn to the consideration of both Houses being in most instances nearly or identically the same), that the previous attainments and the general line of conduct which ought to be pursued by the Peer are almost without exception essential to the popular Representative. An accurate knowledge of the natural rights of men and the just foundations of civil government ; of the British Constitution ; of the principles of finance and of commerce ; of foreign politics and connections ; and of internal police ; patient industry, inflexible integrity, abhorrence of party spirit, watchfulness against the allurements likely to produce it ; care to guard against prejudices ; together with an earnest zeal to promote the good of this country and of mankind by public exertions and private example ; these are qualifications which ought to

to characterise the Legislator, whether placed in the Upper or in the Lower House. It must however be admitted, that a more profound knowledge of several of the subjects mentioned above may in general be expected with reason from individual Peers, than from individual Members of the House of Commons. The Peer will usually have been educated with a view to his station ; the Member of the Lower House may not. The former enjoys a permanent and certain, the latter a temporary and precarious, seat in the Legislature. The former is seldom engaged in any profession : the latter frequently. The former is not called upon, as the latter is, to devote his time and attention to the particular interests of Constituents ; nor to involve himself in the protracted enquiries and patient discussions which necessarily take place upon their private Bills even before they are brought into Parliament. On the other hand, as the popular Representative is introduced by his habits of life to an acquaintance with trade, manufactures, and various objects of local and municipal concern, which are by no means so familiar to the Peer ; a more accurate insight into these topics may fitly be required

quired from an individual placed in the Lower House, than might have been incumbent on him had he been fixed in the Upper.

Referring then the reader to the observations already made in the preceding chapter on those subjects which appertain both to the Peer and to the Member of the House of Commons, I proceed to some particular topics which exclusively belong to the present enquiry; and after adverting to the duties of an individual who aspires to a seat in Parliament, shall subjoin a few brief remarks on the peculiar obligations incumbent on him when elected.

It is the first duty of every man who cherishes a wish to be deputed as one of the Representatives of the People of Great Britain, to consider whether he actually and fairly possesses that pecuniary qualification which the law requires. It is well known that evasive methods are sometimes practised to satisfy the letter of the law on the subject, while they are directly contrary to its spirit and intention. And they are commonly palliated on the plea that the law in question is impolitic; and that

to

to carry it according to its real purport into execution, would be to exclude from seats in the House of Commons men of great abilities and slender fortunes, who might otherwise have exerted their talents in Parliament with the highest advantage to their country. To enquire whether the law is on the whole impolitic or not, falls not within the plan of the present work. But what if this impolicy were admitted? Is a British subject at liberty to disregard and evade a law, merely because he deems it, or knows it to be generally deemed, inexpedient? Let him take, if he thinks fit, according to his station, constitutional means to procure its repeal; but while it remains a law, let him fulfil the first obligation of a subject, and set an example of scrupulous and punctual obedience.

If he is duly qualified according to the spirit of the Act of Parliament, let him in the next place seriously and impartially investigate the motives by which he is incited to become a candidate for a seat in the House. If he is impelled by a desire to gratify ambition, pride, or envy, or to promote his private interest at
the

the expence of the public good; let him eradicate from his breast the unchristian principle, before he indulges a thought of further perseverance in his design. If his motives are sufficiently pure to stand the test of self-examination, let him in the next place consider and appreciate the effects, whether beneficial or injurious, whether limited to himself or reaching to others, which are likely to result from his declaring himself a candidate. Let him estimate on the one hand the services which he may reasonably hope to render to his country and to the human race by the acquisition of legislative power, and by enlarged opportunities of promoting religion, learning and science, of preventing injustice, of discovering and relieving distress, and of improving the manners and morals of others by the influence of a more conspicuous and more weighty example. (On the other hand let him fairly deliberate, whether by offering himself he is not excluding another, who might be expected to discharge the office of Member of Parliament with more ability and advantage. Let him not think lightly of the pain and detriment which he may occasion to his opponent, particularly

ticularly if that opponent be the late representative. Let him recollect the expence, the discord, the tumults, the intemperance, the profligacy, to which a contested election almost always, and an undisputed election not unfrequently, gives birth ; the risk to which he shall be exposed of yielding to the various temptations of the hour, especially if the struggle should be protracted, and the event grow more and more ambiguous ; the danger of becoming inveterate and uncharitable towards his competitor ; of being soured by defeat ; or of finding himself or his family exposed, in case of opposition, to more formidable trials by success and a consequent new line of life.

If, on drawing the balance between the probable good and evil, the preponderance of the former should be such as to justify a conscientious man in stepping forward as a candidate ; he will steadily resolve, if he be considerably conscientious, to watch his heart and his actions with the scrupulous care which so trying a situation requires ; and to avail himself of no sinister means to promote his success.

the expence of the public good; let him eradicate from his breast the unchristian principle, before he indulges a thought of further perseverance in his design. If his motives are sufficiently pure to stand the test of self-examination, let him in the next place consider and appreciate the effects, whether beneficial or injurious, whether limited to himself or reaching to others, which are likely to result from his declaring himself a candidate. Let him estimate on the one hand the services which he may reasonably hope to render to his country and to the human race by the acquisition of legislative power, and by enlarged opportunities of promoting religion, learning and science, of preventing injustice, of discovering and relieving distress, and of improving the manners and morals of others by the influence of a more conspicuous and more weighty example. (On the other hand let him fairly deliberate, whether by offering himself he is not excluding another, who might be expected to discharge the office of Member of Parliament with more ability and advantage. Let him not think lightly of the pain and detriment which he may occasion to his opponent, particularly

ticularly if that opponent be the late representative. Let him recollect the expence, the discord, the tumults, the intemperance, the profligacy, to which a contested election almost always, and an undisputed election not unfrequently, gives birth; the risk to which he shall be exposed of yielding to the various temptations of the hour, especially if the struggle should be protracted, and the event grow more and more ambiguous; the danger of becoming inveterate and uncharitable towards his competitor; of being soured by defeat; or of finding himself or his family exposed, in case of opposition, to more formidable trials by success and a consequent new line of life.

If, on drawing the balance between the probable good and evil, the preponderance of the former should be such as to justify a conscientious man in stepping forward as a candidate; he will steadily resolve, if he be considerably conscientious, to watch his heart and his actions with the scrupulous care which so trying a situation requires; and to avail himself of no sinister means to promote his success.

cess. In his declarations to the electors, whether they appear in the shape of circular advertisements or of canvassing letters, of private discourse or of public harangues, he will scorn the insincere and ostentatious parade of unparalleled zeal for the general welfare, and of extravagant attachment to their particular interests. He will follow the dictates of honesty, and be content with the language of truth. He will conform to the intention of every law actually in force respecting elections. He will enter into no clandestine engagements contrary to the spirit, though not perhaps within the letter, of existing statutes. He will not directly or indirectly angle for suffrages by holding out unwarrantable baits to the voters ; nor, while he professes to offer himself to their free choice, will he seek to overawe them by menaces and intimidation. He will not employ a number of superfluous agents, for the purpose of thus gaining by indirect bribery the votes and interest of the persons employed. Whatever he would not openly do himself, he will not do in secret or through the medium of his friends. Subterfuges and concealment imply the consciousness of guilt. Neither will he sanction
by

by connivance (c) any indefensible proceedings of his adherents on his behalf. On the contrary, he will previously settle with his supporters and agents the principles on which the election is to be conducted ; and will give it in charge to them, if such injunctions appear necessary, to abstain from all unjustifiable artifices, by which they may have been accustomed to forward the interest of their favourite candidate. He will explicitly make known to them his determination neither to fulfil any engagements, nor repay any disbursements, of an improper nature, which may be incurred by them ; and after the election, if occasion should require, he will prove his own sincerity, and discourage future committees from venturing

(c) In elections for boroughs, some of the constituents have been known to make a trifling nominal subscription, under cover of which much illegal treating is carried on ; while the subscription paper is to be produced, if circumstances should require that step, as evidence to the House of Commons that the candidate had no concern in the entertainments. It is highly necessary that he should forbid such practices from the beginning ; as his committee will generally act just as they think expedient for his interests, and give him no information of their transactions until the whole business is concluded.

on misconduct, by resolutely persisting in his purpose. He will avail himself of no unfair or ungenerous advantages over his opponent ; he will discountenance every kind of tumult or riot ; every thing that partakes of calumny, of illiberality, or of rancour. He will endeavour, not from private motives alone, but on the general grounds of public good, to keep down the expences of both parties during the election. He will not prolong the contest a moment for the sake of harassing his antagonist : and if at any period of it, circumstances themselves, or his views of circumstances, should be so far changed as to convince him that duty requires him to desist ; he will not hesitate to relinquish the most flattering prospects, or even the absolute certainty of success.

The temptations incident to candidates in general frequently become stronger and more numerous in the case of him, who, uniting his interest with that of another candidate, proceeds hand in hand with him in the common cause. Should ignorance, or thoughtlessness, or want of principle lead the one to
act

act in any respect amiss ; the example presents itself in a garb particularly ensnaring to the other. He is urged to acquiesce in it, if not by the direct solicitations of the friends of his associate, or by those of his associate himself, yet by motives of personal advantage ; by diffidence and timidity ; and by false delicacy towards his colleague, and an unwillingness to do any thing which may seem to imply a censure on the conduct, or may be likely to prejudice the interest, of the person with whom he has entered into confederation. Let every candidate beware of entering into partnership with another, whose principles respecting the moral duties to be practised at elections differ from his own. Let every one remember that a clear explanation, at the outset of such a partnership, of his own opinions and resolutions is among the best methods of guarding himself against the danger of unwarrantable compliances ; and also of refuting the charge of deserting the cause of his associate, if he should be called upon for concurrence and support which it would be criminal to give, or should honestly declare his objections

to existing practices, when he could not innocently shut his eyes and remain silent.

The candidate who shall astonish his friends and his enemies by practising the rules of uprightness and plain dealing towards both, must prepare himself to hear his ignorance of the world lamented by the one and derided by the other. It is very possible that his sincerity may cost him a number of votes : and for this loss his mind ought to be prepared. It is possible too that it may procure him an accession of independent and zealous friends. If united with judgement it will rarely prove the cause of his defeat, except in absolutely venal boroughs ; though it will almost always be represented as such by those who are hackneyed in the manœuvres of elections. At all events, it is better to act conscientiously and lose the day, than to gain it by acting otherwise. The main business of every man is to obtain the approbation of his Maker. To this end it is necessary that in all his conduct he should be pure, upright, and sincere : it is not necessary that he should be a Member of the House of Commons.

When

When the contest is terminated, on whatever side the victory may have fallen, he will strive to moderate, and, if it be practicable, to extinguish in his adherents that virulent spirit of party, which, however frequently it may infect the candidate himself, generally rages with more bitterness in the bosom of his friends. He will teach them by his own example, that every degree of warmth should subside when the collision which produced it is at an end; and he will use the most strenuous and unremitting efforts to disarm the resentment which they may be disposed to entertain against their inferiors and dependents, who have exercised in support of the opposite interest a right which the Constitution has entrusted to their own discretion. And he will also beware that no local custom, no inadvertence on his part, no persuasion on the part of others, lead him to remunerate his voters, whether by entertainments, by distributing (*d*) money, or in any other

(*d*) The custom of giving money to the voters, after the time for presenting petitions against the return of Members is elapsed, prevails in some boroughs. In some, money is given to each individual voter: in others, the candidate, after paying the ordinary expences is directed to

other way, which he conceives to be contrary to the spirit and actual intention of the laws.

In the preceding remarks the case of contested elections has been particularly held in view ; as most fertile in temptations, and consequently demanding the greatest exertions of judgement and virtue. But in every election there is ample room for the exercise of conscientious deliberation ; and for the application in a greater or in a less degree of most of the hints which have been suggested.

There is indeed one species of election to which many of these hints are inapplicable ; if that is to be called an election, from which every idea of free choice is excluded. I allude to the practice of purchasing a seat in Parliament at a stipulated price, from some one, who is either, in the customary phrase, the proprie-

give perhaps five hundred pounds to a certain person, and to ask no questions about the distribution of it, lest he should involve himself on the score of bribery. Such, he is told, is the custom of the place. A candidate ought to convince himself by enquiry, before he begins his canvas for a particular place, that no improper conduct is expected from him.

tor of a borough ; or is enabled by peculiar circumstances to command the suffrages of its electors. These are transactions so repugnant to the real import and the genuine uses of popular representation, that a man who is not blinded by prevailing practice, or by motives of private interest and ambition, will probably find it difficult, on serious reflection, to satisfy himself of the propriety of bearing a part in them. If the purchase-money be given to the leading member of a corporation, who, reserving a portion to himself, divides the remainder among some chosen associates by whose co-operation he ensures the event of the poll ; the transaction, though it may not fall within the letter of the law, is in truth a flagrant act of bribery. And where is the difference in the spirit of the proceeding, if the consideration be paid to some potent individual, who, by the distribution of his burgage tenures, places the decision in the hands of a few servile agents ; or by menacing tenants with expulsion from their houses and farms, publicans with the loss of their licenses, shopkeepers with the ruin of their trade, extorts compliance from the intimidated voters ; while in the person of the

candidate whom he nominates, he insults them with the appellation of Freemen, and requests the favour of their independent suffrages? If the right of voting for a Member of Parliament is undeniably a public trust; the right of returning a Member by the distribution of burgage tenures, or by any other means, cannot be considered in a different light. And if the former right ought to be exercised without any view to private emolument; reason and analogy require that the exercise of the latter should be equally and no less manifestly disinterested and pure.

It is affirmed that an individual, who by burgage tenures or by other means can command a seat in Parliament, sometimes finds a person who will accept it under a tacit understanding, or even, as it is rumoured, under an express and written engagement, to submit the management of his vote to his patron, or to resign his seat. If there be in truth any Member of Parliament thus circumstanced, let not his situation be compared with that of an African slave. The latter is a slave by constraint, and would be disgraced by the comparison.

I should

I should not hitherto have suspended the mention of a topic which might have been introduced sooner with obvious propriety; had it not seemed to lead to a discussion of some length, with which I was unwilling to interrupt the tenor of the preceding pages. I allude to the information which the candidate should afford to the electors respecting his political principles.

This information ought on every account to be clear, accurate, and full. Not that it is incumbent on him to enter into minute explanations; nor even to deliver his sentiments on the merits of any particular measure, unless he is expressly required by the electors, or urged by the aspect and circumstances of the times. But a statement of his general view of public affairs, and of the leading principles by which he conceives a Member of Parliament should be actuated, is alike beneficial to the candidate and the constituents. It obliges the former previously to consider the proper grounds and springs of political conduct with precision. It tends to diffuse similar knowledge

ledge among the latter, and leads them to attend to opinions as well as to men. It in some degree pledges the former not to deviate from the rules which he has thus openly prescribed to himself, except in cases wherein he shall be able to vindicate his deviation to the electors when he shall again solicit their suffrages on a dissolution of Parliament. And it gives the latter the satisfaction to which they are entitled, of knowing what they are to expect from the man to whom they entrust the defence of their liberties. Should the candidate be pressed to engage that he will support or oppose a specific measure; he will do well to pause, and enter into a more copious explanation. It would be too much to affirm that in no possible case, however palpable it may be in itself, and however maturely he may have considered it, is he to venture to answer for his future conduct respecting it. Yet, in most instances, the utmost length to which he can safely advance, is to express his present conviction; reserving to himself the liberty of finally giving his vote in such a manner, as, after further reflection on the foundation

tion

tion of his opinion, and impartial attention to the arguments of those who oppose it in or out of Parliament, his conscience shall prescribe.

Another question naturally occurs, whether the candidate ought to bind himself to obey, if elected, the instructions of his constituents. Such obedience has been held by some persons to be an essential part of the duty of a Member of Parliament. If he disregards the directions of those who have deputed him to appear and act in their place, how, it is said, does he fulfil the office of a Representative? The general opinion however, and the just opinion, seems plainly to be (*e*), that a Member of the House of Commons is to consider himself not as the mere deputy of those who sent him thither, but as one of the joint Representatives of the whole People of Great Britain; and that, as far as he is the deputy of his immediate constituents, he may deem himself, if nothing has previously passed to the contrary, to have received from them a discretionary power of acting on their behalf exactly as he is to act in

(*e*) Blackstone's Comm. vol. i. p. 159.

ledge among the latter, and leads them to attend to opinions as well as to men. It in some degree pledges the former not to deviate from the rules which he has thus openly prescribed to himself, except in cases wherein he shall be able to vindicate his deviation to the electors when he shall again solicit their suffrages on a dissolution of Parliament. And it gives the latter the satisfaction to which they are entitled, of knowing what they are to expect from the man to whom they entrust the defence of their liberties. Should the candidate be pressed to engage that he will support or oppose a specific measure; he will do well to pause, and enter into a more copious explanation. It would be too much to affirm that in no possible case, however palpable it may be in itself, and however maturely he may have considered it, is he to venture to answer for his future conduct respecting it. Yet, in most instances, the utmost length to which he can safely advance, is to express his present conviction; reserving to himself the liberty of finally giving his vote in such a manner, as, after further reflection on the foundation

tion

tion of his opinion, and impartial attention to the arguments of those who oppose it in or out of Parliament, his conscience shall prescribe.

Another question naturally occurs, whether the candidate ought to bind himself to obey, if elected, the instructions of his constituents. Such obedience has been held by some persons to be an essential part of the duty of a Member of Parliament. If he disregards the directions of those who have deputed him to appear and act in their place, how, it is said, does he fulfil the office of a Representative? The general opinion however, and the just opinion, seems plainly to be (c), that a Member of the House of Commons is to consider himself not as the mere deputy of those who sent him thither, but as one of the joint Representatives of the whole People of Great Britain; and that, as far as he is the deputy of his immediate constituents, he may deem himself, if nothing has previously passed to the contrary, to have received from them a discretionary power of acting on their behalf exactly as he is to act in

(c) Blackstone's Comm. vol. i. p. 159.

behalf

behalf of the rest of the Nation ; that is to say, in such manner as the public good and the principles of morality shall in his judgment require. Whatever respect then may be due to their opinions and instructions, he is not necessarily pledged to conform to them. If he has given the electors reasonable grounds to presume on his obedience, either expressly by his declared sentiments, or impliedly by permitting them to choose him under that expectation ; he is undoubtedly bound to comply with their injunctions, or to give them the option of vacating his seat. But the question under consideration is, whether he ought to contract such an engagement ; and it must be determined by the answer returned to another, whether the general welfare of the Nation would be forwarded or counteracted by establishing obedience to instructions as the duty of the popular Representative ?

The latter question may for various reasons be answered with a decided negative,

1. The fundamental and indeed the only argument alleged to prove the utility of obedience

dience to instructions, namely, that it ensures in the House of Commons a sufficient regard to the sense of the People, cannot in the present instance be applied with advantage. For, notwithstanding the apparent defects in the national representation, the sense of the People concerning any particular measure, when deliberately formed and permanently expressed, will become in no long time, from the connection between Members of Parliament and the rest of the Public, from the degree in which the former imbibe by means of conversation and familiar intercourse the opinion of the latter, from the recurrence of Elections, and the operation of other causes, the sense of the House of Commons. While those defects continue, the evils resulting from them would be aggravated in a tenfold degree by the introduction of the passive principle under consideration; and might give to the petty electors of enslaved and venal boroughs an immoderate and ruinous preponderance in the constitutional scale. And whenever a temperate reform of Parliament shall take place, this argument for obedience to instructions will cease to be at all applicable; as there could then

206 ON THE DUTIES OF MEMBERS

then be no doubt of sufficient regard being spontaneously shewn by the Members to the opinions of their Constituents.

2. Were the principle of implicit obedience established, the influence of a corrupt Government and a factious Opposition would not be less industriously exercised than it is at present; but it would be exercised in another place. It would be transferred from a scene of action where it is exerted on agents who are invested with conspicuous public functions; who are responsible for the discharge of their trust; who are watched by the whole Nation which they represent; who are impelled by pride and the love of reputation at least, if not by better principles, to keep themselves pure; who have the most ample opportunities of intelligence; who are little exposed to be hurried away by sudden phrensy; to agents obscure, irresponsible, servile, ignorant, and unstable. Every borough and every county would exhibit the picture of a perpetual general election. For though the public sense would come so plentifully to market, as to be considerably lowered in its price; it would never
be

be such a drug as not to find a purchaser. Hence would arise an uninterrupted succession of cabals, of bribery, of artifices, and of riots, with all their attendant evils, public, private, and domestic, similar to those which are now experienced in their full force but once in seven years.

3. The effects which the introduction of this principle would produce, by taking away the weight and the dignity of the House of Commons in its collective capacity, as well as that of the individual Members, would be in the highest degree pernicious and alarming. The characteristic advantages of the institution would be undermined and annihilated. The same pains would no longer be taken in the acquisition of political knowledge, there being no longer the same scope for laudable exertion. Public debates would languish, and the beneficial consequences of their being witnessed would be lost. The Borough Demagogue, and not the Member of Parliament, would be the man of importance. The public speaker, abandoning the House of Commons, would fly to the popular meeting as the road to
4 eminence

eminence and the real seat of power. It is there that without evidence, without authorities or documents, he would call his auditors to decide on the conduct of negotiations or the expediency of treaties, on the state of public accounts, on military and naval operations, on the most intricate proceedings of Government, and the most complicated charges of ministerial delinquency. The duty of watching over the interest of Great Britain being thus virtually snatched away from the House of Commons, and divided and portioned out among a multitude of inferior jurisdictions, would be well performed no where. The unity of the democratic part of the Constitution would be broken; meeting would be played off against meeting, and instructions, now become peremptory, against instructions. Members of Parliament, stripped, if not of the right of judging, yet of the power of acting according to their judgement, would become the mere proxies of aristocratic chiefs, contemptible corporations, and misguided mobs. The House of Commons, the safeguard of the British Constitution, would be altogether de-

prived of its energy, and sink into silent contempt. And the Constitution itself, though its forms might continue to subsist for a time, would speedily be found to have lost its genuine spirit, and that well-poised equilibrium essential to the happiness of those under its protection.

Such would apparently be the fatal consequences of universally obliging the popular Representative implicitly to obey the instructions of his Constituents; and such are the evils which every Candidate or Member of Parliament who now binds himself to obey them, contributes to entail upon his country. Let me not however be understood to deny the right of the Electors to communicate individually, or collectively, to their Representative their opinion of any public measure whatever; nor to question the propriety of exercising it on important occasions. On such occasions it is strictly their duty to exercise it; and even a repeated exercise of it on the same topic may sometimes be highly advisable. But let not the communication, though made under the name and form of instructions, be intended

despotically to constrain him to act in opposition to his better information and maturer judgement. The declared sentiments of his Constituents will always claim from him respectful and deliberate regard; especially when they proceed from numerous and well-informed bodies of men; and when they relate to measures which rest on simple principles of politics, or more especially of morality, obvious to common apprehension.

There is yet another subject to which I have already had occasion briefly to advert; the expensiveness of Elections, particularly if contested. The evils which flow from this source are so many, and so alarming, as to be entitled to more distinct and ample consideration than could hitherto have been conveniently afforded to them. They may be reduced under two heads; the first comprising such as endanger the general happiness by immediately affecting the House of Commons; the second, such as undermine it by their influence on private individuals.

1. The unbounded profusion which the eagerness

eagerness of competition has introduced, and established custom has sanctioned, confines within narrow limits the choice of the Electors, by deterring or disabling numbers, desirous and fit to represent them, from involving themselves in a ruinous contest. It tends to destroy the balance of the Constitution, by virtually transferring the right of election from the people at large, either to combinations of Peers, who may find their advantage, especially in the case of county elections, in uniting to crush all opposition to their mandates, by holding out to the independent Country Gentleman the prospect of intolerable expence; or to the Crown, whose Ministers may occasionally be corrupt enough to fight the battles of their dependents directly or indirectly out of the public purse; or to the leading political parties of the day, who may bring forward, on the strength of large subscriptions, a number of their adherents on whose fervility they can rely. It tends to fill the House of Commons with Representatives of Boroughs little known to their Constituents, little connected with them, neither respecting them nor respected by them; and to preclude the advantages

tages which result from the Member of Parliament feeling himself responsible to those whom he immediately represents. It tends to render the public man little shocked at venality; for it is that perhaps to which he owes the possession of his seat: and little solicitous about his character or his actions; for those are not the recommendations to which he looks for the continuance of it. It tends to support the factions which range themselves on the side of the Court, and those which are arrayed under the banners of Opposition, by increasing the number of needy Members; and of needy Members peculiarly indisposed to brook the pressure of contracted circumstances, from having been in possession of affluence previous to their election. Many a victorious Candidate, when he enters the House of Commons,

—Stands as one escaped from cruel fight,
Sore toil'd, his riven arms to havoc hewn,
And cloudy in aspect (*f*);

and is strongly tempted to grasp at the forbidden remedy, which promises to allay the

(*f*) Milton's *Paradise Lost*, b. vi. l. 448.

smart

smart of his wounds, and restore him to his pristine vigour. By the present expensive system of conducting Elections, men who had risen to wealth by the plunder of distant regions might be enabled to force their way into the British Parliament through the barriers erected to secure the Constitution; and triumphantly to introduce through the breach a band of disciplined adherents, by whose aid they might elude the accusations and defeat the claims of justice, and thus encourage the rapacity of future oppressors. The combined operation of these various evils contributes materially to injure the House of Commons in the public esteem, to cast a general imputation on its proceedings, and by detracting from its credit to diminish its power; while at the same time it accumulates obstructions to every plan of reform by which they might be restrained.

2. The effects produced on individuals are alike injurious to private happiness and to the general welfare of the community. The irritation excited by the loss sustained in point of fortune, both by the winning and the losing.

competitor, sharpens the inveteracy of party; lengthens the shyness and animosities arising from the contest; and aggravates the angry purpose of retaliation and revenge, bequeathed from father to son, and destined to embroil subsequent generations. The family in the mean time, like the wife of Seneca, bears in its faded form and pallid countenance a memento of the blood which it has lost. Every step is feeble, every exertion languid. Domestic comforts are narrowed; and those that remain are embittered by the recollection of such as are no longer attainable. The education of children is conducted on a less ample plan; their destination in the world determined by less liberal views; and their settlement in life formed on a more contracted scale. Or the humiliation of retrenchment in outward splendour is shunned by an exorbitant and therefore short-lived rise of rents, by the premature destruction of timber, by the neglect of the necessary erection or repairs of farm-houses, by imprudent mortgages, and by temporary expedients, often ruinous in the end; by displaying in ostentatious luxury whatever penuriousness can save in necessary expences;

expences; and by assigning to gaudy pomp what was formerly devoted to compassion and charity. But the lavish expensiveness of Elections extends its pernicious influence far beyond the leaders of the contending sides. It promotes almost every kind of vice; and supplies without limit the materials for drunkenness to the voters and their families, with all its attendant effects on their morals and habits of life. It is injurious to the peace of society, by familiarising the lower ranks to scenes of profligacy and riot. It is injurious to commerce, by accustoming the manufacturer to idleness and intemperance (g), thus rendering him indisposed or unable to work. It is injurious to the national strength, by ruining the health together with the morals of the subject. It is injurious to the Constitution, by extinguishing public spirit and virtuous principles of political conduct in the breast of the People; and by impressing the considerate and the good with such an abhorrence of the

(g) So convinced are some of our unrepresented manufacturing towns of this truth, that they would consider the right of electing Members of Parliament as one of the greatest calamities which could befall them.

numberless mischiefs arising from it, as to deter them from coming forward as Candidates, and almost to inspire them with disgust against Elections and Parliaments. In all these different ways, as well as by its immediate effects on the House of Commons, it preys on the welfare and endangers the stability of the Empire.

Maladies which from their nature appear on the point of exhausting and wearing out themselves, may be permitted to take their course. But this malady threatens to increase with the increasing wealth of the State. The extension of trade, foreign and domestic, prepares a continual influx of monied Candidates; and the thirst of bribes, rendered insatiable by customary and periodical indulgence, will stimulate the Electors more and more. Fostered thus by natural causes, the growing evil can be checked only by the strong arm of law. And the Member of Parliament who shall devise and carry into execution a plan by which it may be speedily and generally checked, may congratulate himself on having rendered a more essential service to his country, than

than the General who by his victories should add new provinces to her dominion.

It remains to subjoin, according to the order already proposed, a few remarks on those peculiarities in the situation of a Member of the House of Commons, to which the observations already made on the parliamentary duties of Peers are not immediately applicable.

The Member of the Lower House, having an identity of interest with the mass of private Citizens from which he has been recently taken, and into which, generally speaking, he is shortly to return, is exempt from many of the prejudices which envelop hereditary and permanent Nobility. But while he feels, in common with the Peer, the ensnaring allurements of promotion, of emolument, and of party; he is also exposed to prepossessions and temptations of his own. He is liable to be influenced in his conduct by undue motives resulting from his past and present situation. He is in danger of being led to commit himself as a supporter and partisan of Government,
by

by asking favours for the friends who have promoted his interest, or may be likely to promote it, at elections. He is apt to regard himself, not as the disinterested Representative of all his Constituents, but as the partial delegate of those who voted in his favour; to be guided in supporting or opposing political measures, rather by views of re-election than by the dictates of conscience; and, when the private advantage of the Borough or of the County by which he is deputed, jars and clashes with the public good; to forget that he is a Representative of all the People of Great Britain.

It occasionally happens that a young man of little fortune, but of promising talents, is introduced into the House of Commons by some political chieftain on a sort of mutual speculation. The former trusts that he shall obtain credit and influence; the latter, that the credit and influence which the *élève* may acquire, will redound to the honour and contribute to the advantage of the patron. A young Member thus situated enjoys for a time the complaisance usually manifested by the House towards

wards young Members; but when that has subsided, as of course it soon must, he commonly finds a very strong prejudice subsisting against him, and shewing itself in those ways which are well known to persons accustomed to witness the debates. This prejudice is generally so powerful as not to be overcome but by extraordinary abilities. As far as it originates in envy, and thence it often arises in part, it is highly blamable. But as far as the disapprobation is founded on reason, it ought by no means to be smothered. For the trade in question is in a moral light so objectionable, that it is very desirable that few persons should conceive themselves to have capital sufficient for undertaking it.

Except under very particular circumstances a Member of Parliament ought not *to pair off*, as the term is, without having an intimate knowledge of the whole of the subject at issue; lest new facts should be brought to light, and new reasonings advanced, which, had he been present, might have altered his opinion. When previously solicited, as he frequently will be, to take a specified part respecting

specting some private business depending, never let him promise more than that he will *attend* the progress of the Bill, and vote according to what he shall deem its real merits. The solicitations urged on such occasions are often so importunate and so unreasonable, as to have some chance of impelling the person to whom they are addressed into an unmerited partiality for the other side of the question. It is to be feared, however, that it is by no means uncommon for individuals in the Upper as well as in the Lower House to be governed by motives very different from those of public duty in voting on what is called private business. He who observes the consciences of his neighbours flumbering in torpor and supineness ought to be on his guard to preserve his own from the contagion.

Feigned excuses and exaggerated statements of sickness, framed for the purpose of escaping the trouble of attending on Calls of the House, or on Committees, will be scrupulously avoided by a conscientious Member of Parliament. And as attendance on Committees, whether relating to elections or to other subjects, frequently

quently proves a fatiguing and laborious office, though an office in which much parliamentary and much general knowledge may be acquired ; those Members in particular who are young and robust ought to make a point of undertaking it. Active and impartial attention in examining witnesses on such occasions, and a perfect freedom from the influence of private attachment or dislike, as well as of political considerations in forming a decision, are duties of so obvious a nature, whether enforced in each individual case by oath or not, that it seems unnecessary to dwell upon them.

As the House of Commons claims to itself the exclusive management of the public purse, the right of originating and fixing all pecuniary impositions to be levied on the subject, and of withholding from Government the customary supplies (a control wisely vested in the Popular Representatives, in order that they may be enabled in great emergencies to secure compliance with the general sense of the People) ; the proper mode of exerting this power becomes one of the first considerations which ought to occupy the mind of

[illegible]

CHAR.

CHAP. VII.

ON THE DUTIES OF THE EXECUTIVE OFFICERS OF GOVERNMENT.

THE appellation of Executive Officers may be given to all persons possessed of offices instituted for the national service, and paid out of the national purse. These public functionaries are of various professions, and of various ranks. Our concern in the present chapter is with those who, occupying the highest posts in the civil department of the State, may be regarded as the depositaries, under the Crown, of the political power of Government.

As it is not my design to enter into a detail of the circumstances which discriminate the authority, jurisdiction and employment of one Member of the Cabinet from those of another; the confusion which would attend the mention of several persons at once will apparently be best avoided by couching the subsequent observations

224 DUTIES OF THE EXECUTIVE

servations in general terms. Though some of these observations may have particular reference to a Prime Minister, they will commonly be applicable to his colleagues; and the application will be too obvious to require to be pointedly made or illustrated.

The motives and views which should guide the determination of a conscientious man, with respect to accepting an executive employment, with respect to the performance of its duties, and with respect to resigning it, will be successively considered.

I. A good man, who has an official situation in prospect, will diligently occupy himself in the preparatory cultivation and improvement of his understanding, principles, and dispositions. He will exert himself to acquire by study, by meditation, by an observance of men and manners, that enlargement of his intellectual powers and capacities, that knowledge and experience, that presence of mind, those habits and virtues, of which he is likely to stand in need. He will be guided in his pursuits by an especial regard to the functions of
the

the post which more particularly opens to his view; and the higher that post is, the more will he extend his attention beyond its immediate limits; the more industriously will he strive to qualify himself to turn to the account of the Public the influence which it may afford him over other departments of the State; and the more closely will he observe at home the operation of those general causes which have contributed in other times, and in other countries, to the growth or to the decline of the morals and the strength of Empires.

The public welfare is the object of official institutions. It is an object to which a good man will pay steadfast attention in determining the course which he should adopt, when promotion throws open her gates before him. He will not accept an office, unless he is persuaded that in point of talents, of information, of diligence, of health, he is competent to fulfil the duties of it to the satisfaction and benefit of his country. In making the estimate, he will beware of over-rating the amount or misconceiving the nature of his own abilities; and of affixing an undue value to wealth, power, ho-

nours, and reputation. He will also take into the account the temptations by which he must expect to be assailed; and the strength which they may derive from the peculiarities of his own circumstances, temper, and dispositions. And above all things he will scrupulously try himself in the balance of integrity, that he may discern whether he possesses that upright simplicity and steadfast firmness of mind, which may enable him to resist the allurements of personal emolument; to keep himself disentangled from the snares of party; and to refuse improper applications presuming on private friendship and affection, and aided by the importunity of his colleagues in power. He will also attend to the moral effects which his elevation may appear likely to produce on his family. He will not accept an office to the exclusion of any other person, by whose appointment he believes that the public interest would be more essentially promoted than by his own. Not that he would necessarily be criminal in undertaking the employment, even though he should know that another man more capable of discharging its duties would probably be advanced to it, were it not pre-occupied.

He

He would unquestionably be bound in conscience to point him out. But Ministers are frequently obliged to divide the several offices of Government among themselves, according to the principle on which the Manager of a Theatre casts the parts in a Drama. At any rate a character is not to be consigned to an actor who is not able to support it; yet it is not always to be committed to the person who is most qualified for the task. His services in that part may possibly be well supplied by an inferior performer; but they may be indispensably requisite in another, where no substitute can be found.

A good man, though satisfied of his own competence faithfully to discharge the duties of the post which is offered to him, will not resolve to accept it, until he has maturely weighed the character and political views both of the Sovereign whom he is to serve, and of the public men with whom he shall have to co-operate. By the accession of his strength, be it less or more, a bad Administration may have the term of its continuance prolonged; or a good one may be established to the exclusion

of a better. And in either case the Public may receive an injury from his concurrence, for which the most zealous exertion of his personal services may never be able to compensate.

He will remember, that no quality raises a person so high in the opinion of the country as disinterestedness. He will not ignominiously put himself up to sale, sticking for sordid and unwarrantable stipulations; nor render his character despicable in the eyes of honest men, by marking his entrance into office with the acquisition of some unmerited personal decoration or advancement in rank for himself, or of some lucrative and equally unmerited reversion for his son. The acceptance of an office under circumstances of ambiguity, or suspicion, not only degrades the particular individual, and by tarnishing his credit permanently impairs his power of doing good; but tends to extinguish patriotism, by diffusing an universal distrust of ministerial integrity. He will therefore impartially consider, whether, by stepping into the post in the existing state of affairs, he may not lavish away to little purpose his stock of public estimation, for the

prudent expenditure of which no less than of every other talent he is strictly responsible. He is to regard it as a raw material, too precious to be worked up in articles of a slight and perishable nature. It is to form the basis of every texture with which he is hereafter to cherish and decorate his country. But if, on the other hand, the present emergence should be such as to require him to expend it liberally, he will not shrink from incurring the unpopularity of accepting an official station ; and will rejoice in offering up the sacrifice of present reputation at the shrine of public happiness.

A good man, as he will abstain from practising undue arts towards the King, towards potent Individuals, and towards Parliament, and never will resort to humiliating solicitations for the purpose of paving his way to an official employment ; so will he be extremely cautious, on accepting it, of entering into any engagements either with respect to his general conduct, or to his permanent co-operation with particular persons. It is impossible for him to anticipate the circumstances in which he may

afterwards find himself involved in consequences of his own ministerial station, or of the vicissitude of events at home and abroad. He cannot foresee the changes which may take place in his present views of measures and of men. He cannot sufficiently guard against the distressing dilemma of being obliged to abandon his post at a time perhaps when his country loudly calls for his services; or of sustaining the pointed reproaches and the undisguised contempt of his colleagues. There is not perhaps any circumstance which contributes more effectually to degrade a Statesman in the eyes of the community at large, and to disqualify him from obtaining the confidence essential to the success of all his subsequent exertions, than an opinion, though ill founded, of his insincerity. The tendency however of these remarks is merely to warn him against contracting precipitate engagements, not to discourage a manly avowal of his principles. It is on many accounts of the highest moment that, previously to his undertaking the office proposed to him, the Nation which he is to serve, and the coadjutors with whom he is to act, should be apprised of his political tenets. It is altogether
necessary

necessary for his future peace, that he should be conscientiously explicit with the latter; and, while he shews himself not unwilling to bear a part in an Administration with some of the Members of which he differs in sentiment on political points of secondary importance, that he should not leave them directly or indirectly impressed with the idea, that his concurrence may be expected in measures which his deliberate judgement shall condemn.

The money raised from the People for the public benefit is designed to be applied in the payment of actual services, not in gratuitous donations. It is true that there are certain posts, exclusive of those offices which the policy of the State deems expedient for supporting the dignity and splendour of the Crown, to which no public duties are attached. But these, as long as the number and the value of them are confined within due limits, have their proper use. They are destined to requite extraordinary merit; to secure a reasonable provision to an individual, or to his immediate descendants, if his abilities are called from a situation of advantage to himself, to one less

lucrative and permanent, but more beneficial to his country ; to afford becoming retirements to those faithful servants of the community, whom on account of their declining years, health, or abilities, or of some peculiar occurrence in the political hemisphere, it is fit to remove with honour from the busy stage ; and occasionally, perhaps, by furnishing leisure and competence to a man of industry, science, or learning, to enable him to accomplish a work or perfect a plan of national utility. A good man therefore ought not to accept one of these sinecures (*a*), unless he believes himself honestly entitled, on one or other of the principles which have been stated, to public remuneration or public maintenance. And if he accepts it as the means and the recompense of future exertions, he will punctually fulfil his engagement ; and will at once relinquish the earnest which he has received, if he should find himself incapable of redeeming the pledge which he has given.

(*a*) The Tellerships of the Exchequer, and Chief Justiceships in Eyre, are instances, among others, of the sort of offices alluded to. There are likewise Military Governments of a similar description.

II. Let

II. Let us now suppose the die cast ; and consider the views which will influence a conscientious man, when in the actual possession of an efficient post in Administration.

For the sake of perspicuity it may be expedient to distribute the following reflections under different heads ; and, after having employed the first of those heads in general observations, successively to appropriate the remainder to the duties of a Minister with respect to the exercise of patronage ; the transaction of official business ; the choice of public measures to be brought forward ; and the conduct to be observed towards the Crown, towards Parliament, and towards Foreign Powers.

I. From the first moment of his occupying a station in the Executive Government, a good Minister will devote himself to a sedulous discharge of its duties. He will perceive that the Public has the same right to his exertions which any other master has to those of any other servant. He will therefore ask himself habitually what it would be reasonable for him
to

to expect, if the interests confided to him were absolutely his own, from any subordinate agent whom he should entrust with the management and superintendence of them ; and will at the same time bear in mind, that public business would never proceed, if Ministers were not to give far more time and attention to it, than a private agent is ever found to bestow on the concerns committed to his care. To diligence he will add punctuality even in matters of comparatively small importance, as well as in those of superior magnitude. Unwilling to occasion disappointments, he will be cautious of exciting expectations ; slow to make promises, he will be strict in fulfilling them. He will guard against falsehood, expressed or implied ; against insincerity, in all its shapes and modifications. He will not strive to retain his friends or to conciliate his enemies by practising on their weaknesses, their credulity, their avarice, their fears, their vanity, or their pride. He will not encourage their failings or their vices to gain their support. But, while he discards artful condescension, he will cultivate ingenuous affability. He will be universally free from superciliousness, and shew himself
easy

easy of access to the humblest of his fellow-subjects, with whom business may render it necessary for him to have intercourse. He will be candid in attending to representations, patient in listening to complaints, free from irritability and peevishness under provocations. He will uniformly discountenance flattery, and every degree of servile compliance, whether in his immediate dependents, or in those who solicit his protection and favour. Conscious of the extensive influence of his example, he will endeavour, as far as may be practicable, to regulate his conversation and actions with a view to the general encouragement of every thing that is good and laudable. He will not permit the affairs of State unnecessarily to detain him from the public offices of religion; nor select the Sabbath as the day for levees and entertainments. Aware of the baneful effects of progressive luxury, he will discover in his conduct a marked distinction between his ministerial and his personal capacity; and, if the former require an occasional degree of pomp and splendour, will exhibit in the latter simplicity and moderation. Uncorrupt himself, he will set his face against every

every mode of corruption in his dependents; and will not connive at practices in them, in which he would deem it dishonest to be personally concerned. Proposing the good of his country as the leading object of his labours; and mindful of the express and solemn terms in which Revelation prohibits her votaries from pursuing the most valuable object by any other means than truth and virtue; he will watch his own proceedings with unremitting jealousy, lest in some unguarded moment present convenience, personal interest, private affection, or any other sinister or reprehensible motive, should lead him unwarily to allow in himself, or in his subordinates, or to behold with indifference in his co-adjutors, a deviation from the paths of uprightness and sincerity. He will remember that criminal pliability, in addition to the guilt which is contracted by it, involves the ruin of his character. Let him not hope that his fault may rest unknown. The enemies of a Minister have eagles' eyes to discern their prey, and eagles' talons to tear it in pieces. He will remember, that in the whole catalogue of vices there is scarcely one more encroaching than
political

political corruption. It is a disease which makes its advances with such unsuspected rapidity, that, almost before it attracts notice, it has seized the vitals. What has been once done, pleads precedent; and a former transgression often seems to require a second to vindicate it. The only antidote by which a Minister can secure himself from the contagion, is the habit, formed betimes and resolutely maintained, of deciding at once on every case on the stable ground of rectitude; without exposing the bulwarks of his integrity to the risk of being undermined, while he is holding parley with expediency.

While he shuns the shoals and quicksands in which the young Statesman is frequently entangled by an immoderate love of fame; he will steer aloof from a rock no less dangerous to old Politicians, a contempt of popular opinion. Knowing himself to be in some measure precluded, like a King, from hearing uniformly the voice of truth, he will endeavour to obtain at least one faithful and intelligent friend, who will point out his failings with kind but impartial sincerity; and keep him
on

238 DUTIES OF THE EXECUTIVE

on his guard against being seduced by the incessant temptations attendant on office, or the conduct of inconsiderate and prejudiced colleagues. He will carefully weigh the imputations cast upon him by his political enemies, and avail himself of their malevolence as a remedy, however bitter and acrimonious, against the fascination of self-love, and the delusions produced by an increasing fondness for power. And though he should find, as he probably will find, that his conduct is perpetually misunderstood or misrepresented, and that to clear up misconceptions is almost as difficult a task as to prevent them; yet let him not be seduced by those circumstances to be in a single instance less scrupulous either in point of diligence or of rectitude, nor carelessly to omit to take proper methods for the purpose of obviating such mistaken ideas of his motives and proceedings as are on any account worthy of notice.

2. Assiduous in fortifying every inlet of danger, while he practises universal courtesy, he will divest himself of that obsequious facility of temper which is incapable of giving a
6 denial.

denial. He will labour to arm his mind with inflexible constancy. While he is guarding against inordinate self-esteem, and want of sympathy for disappointment and distress, the common effects of power long enjoyed; he will be equally on the watch against indulging an extravagant partiality for his relations, friends, and favourites; and will not decorate them with unmerited titles, nor load them with pensions, offices, and reversions. In the disposal of honours and emoluments, the good of his country will be his ruling motive. That principle he will openly and uniformly avow; and will be anxious to exempt himself by all reasonable precautions from the suspicion of being influenced by the sinister allurements of ministerial or private convenience. There are few methods by which a Statesman can render more essential service to the community than by a judicious exercise of his patronage. Consistent simplicity of conduct in this point, manifestly combined with personal disinterestedness, will not only secure to himself national confidence and esteem, and conciliate to his measures that general favour and approbation, which
in

in the hands of an upright Minister become the means of accomplishing the noblest and most beneficial designs ; will not only contribute to excite every subordinate officer to a diligent and faithful discharge of his duty ; but will tend to revive and invigorate public spirit in every quarter of the kingdom ; to call forth an emulation in virtue ; to diffuse an ardour of patriotism, which spreading through every class of the community, every department of the State, every branch of the public service, will produce effects truly great and glorious. There are likewise other advantages resulting from a steady adherence to this principle, of which he will himself reap the peculiar and immediate comfort. He will thus preclude his supporters, as far as it is possible to preclude them, from every oftenfible plea for taking offence when their requests, improper in themselves, or unfit to be granted under existing circumstances, are refused ; and deter them from preferring numberless claims, the rejection of which would have drawn upon him the resentment, and perhaps the active opposition, of disappointed pride. If his situation enables him in some measure to
guide

guide the Crown in conferring the dignity of Peerage, he will recollect that in bestowing a title on an individual he gives a Legislator to his country. In distributing ecclesiastical promotions he will consult the welfare of religion. In the nomination of the commanders of fleets and armies, he will have regard to personal merit, not to parliamentary connections. He will not assign the office of conducting an expedition across the ocean to a Member of the Upper or of the Lower House, either for the mere purpose of gaining over, or of removing, a troublesome opponent. If those whom he appoints should be guilty of speculation, scandalous neglect, or other criminal proceedings; he will not strive to shelter them from enquiry and from punishment, either, on the one hand, in consequence of being attached to them as his own friends and supporters; or of foreseeing on the other, if their relatives and connections are adverse to him in politics, that his acquiescence in the scrutiny and the chastisement will be clamorously ascribed to a desire of wreaking vengeance on his opposers. If through events, which they could not control, they should fail of success in their

professional efforts, he will not screen himself by making them the unjust victims of public indignation. In filling up inferior official situations, and in recommending persons to his Sovereign, when the post which he occupies authorises such a step, to be placed at the head of high executive departments ; he will scrupulously make choice of men, whose abilities and attainments are suited to the functions which they will have to discharge. He will be cautious in his appointment of public servants abroad, not merely in proportion as the trust committed to them is important, but in proportion likewise as their removal from inspection renders the detection of misconduct more difficult ; and thus contributes to exempt them from the restraint of conscious responsibility. Shunning the example of France in the days of her ancient Government, when she constructed with stupendous magnificence the highways which connected her populous cities, and abandoned the meaner and less frequented roads to impassable ruin ; he will be no less constantly guarded in his nomination to offices in obscure corners of the realm, and in distant colonies, than to those which are exposed

exposed to daily observation. He will seek, he will encourage, and he will reward merit, in whatever line it may be found, and in whatever situation it is employed. Instead of indiscriminately committing to Members of Parliament who support him, the nomination to public offices in his disposal which become vacant in their respective boroughs; he will not hesitate to give a denial, when the person recommended is obviously unfit for the employment; and in doubtful cases will endeavour to procure impartial and satisfactory information. He will not grasp at the patronage allotted to his colleagues; nor, while he converts to its destined purpose that which the Constitution and established usage have annexed to the post which he fills, will he attempt to extend it by creating unnecessary offices; nor will he feel himself excused by the selfish example of his predecessors, from abolishing such as he finds existing.

3. The same spirit of impartiality, the same attention to the general welfare, will direct him in executing the business of his office, and in superintending the proceedings of his

by hasty and superficial observers, may at length be proved to belong to the former.

He will be desirous rather of a good name than of a great name. In choosing his objects he will act, not with an eye to their temporary lustre, but with a systematic attention to their intrinsic worth. He will not consider the wealth of the Nation as of greater moment than its virtue; nor its grandeur than its happiness. He will search into the various openings for improvements of every kind, which the circumstances of the different foreign possessions belonging to Great Britain may afford. In recommending to public encouragement, arts, sciences, and national institutions, he will give a decided preference to those which evidently have a moral tendency, over those which are calculated only for the ornament and embellishment of life. He will not strive to raise to an unfair pre-eminence in the public esteem, nor to promote at the expence of general good the objects lying immediately within his own department. But whatever measure his duty requires him to pursue, he will pursue uniformly and consistently;

sistently ; and not, as is the practice of ignorant, slothful, and unprincipled Ministers, by feeble and timid expedients. And finally, he will never be deterred from laying the foundations of an useful plan, by foreseeing that in all probability he may be dismissed from office before half the superstructure is erected ; and the credit of the whole fabric be transferred to his successor, and perhaps his enemy, who shall complete it.

5. A good Minister will not forget the temptations, to which the experience of different ages and countries proves that he will be exposed, of conceiving himself leagued on the side of the Crown against the People ; and interested to extend beyond its due limits that prerogative of which he reaps the immediate advantage. After purifying his own mind from those pernicious errors, his next anxiety will be to erase any corresponding impressions which may have been made on the breast of the Sovereign. He will behave to his master with respect, but without servility. He will communicate with him as freely as prudence will possibly permit on all public affairs ; but while he renounces every attempt or wish to cripple

cripple him in the proper exercise of his constitutional powers, he will not tamely comply with the inclinations of the King in opposition to his own conviction. He will remember that his country looks upon him as the author of the counsels of the Crown ; and, whatever be the proceeding, pronounces him responsible. Far from exasperating the Royal bosom against the opposers of the measures of Government, he will studiously seek to allay every degree of unjust irritation which their conduct may have excited ; and, instead of aggravating the cause of offence by secret and calumniating misrepresentations, will liberally give them the credit and the praise, wherever it appears to be deserved, of acting from upright, though erroneous motives ; and where the motive cannot be clearly investigated, will point to the side of charitable conjecture. He will consider himself bound to act towards his master the part of a judicious friend, in giving him faithful and unreserved advice on all matters in which he conceives that his interposition, though not strictly required by official duty, will conduce to the welfare of the country at the head of whose affairs he is placed. Conscious that Kings seldom hear the voice of truth, and are exposed

posed by their situation, however pure their intentions may be, to peculiar and numberless disadvantages ; he will regard himself as under a general obligation to remove, if he may be permitted to remove, the veil of prejudice and delusion ; and to exert whatever influence he may have acquired over the Sovereign in inspiring him with patriotic desires, and kindling in his breast a predilection and zeal for the promotion of civilization, liberty, justice, and religion, at home and abroad.

6. In Parliament a Minister ought to be armed with that calmness of temper, the result of sober reflection and conscious innocence, which may enable him to bear with composure the provocations which he must expect to experience. He will habituate himself to distinguish, whenever an opportunity presents itself, between such of his opponents as encounter him, though systematically, from upright motives ; and such as are actuated by views of self-interest, or the impulse of factious resentment. He will not charge the latter with their fault ; but will avow his opinion of the former. He will invariably resist that destructive enemy
of

of good government, of public and private virtue, the spirit of party. Yet, in the midst of his most vigorous efforts, he will proceed with that circumspection and wariness which are necessary in the attack of a foe so strongly intrenched; of an usurper who has imposed his authority on innumerable adherents, and seems even to have established his throne in their hearts. He will not harbour unreasonable suspicions against neutral Members of Parliament; nor hesitate to cherish independence, by publicly ascribing to their intentions and conduct the credit which they appear to deserve. Much less will he afford room for his supporters to conclude, that he feels gratified when they seize some favourable instant of giving vent to their treasured inveteracy against those, who profess to be unconnected with either side. In sustaining the assaults of his antagonists, he will preserve a due medium between the impenetrable silence of disdain, and the foreness of distempered sensibility. In detecting inconclusive arguments, in repelling unfounded imputations, he will not allow himself the base satisfaction of unjust or acrimonious retorts on his opponents. Anxious, by

the accomplishment of his plans, to promote the public good, he will be cautious not to lessen his chance of success by exasperating his adversaries to unremitting and virulent resistance, for the sake of gratifying his vanity by a short-lived triumph, or indulging the angry feelings of the moment in a sharp reply. He will remember that nothing is so irritating as affected contempt. He will remember that consistent simplicity and frankness, combined with approved disinterestedness and ability, with the aid of an unruffled temper and conciliating manners, will charm down even the rage of Party. Nor will he forget that the time may come, and perhaps ere long, when the welfare of his country may indispensably require him to unite with some of those very men, who are now drawn up in array against him. He will therefore beware lest by his indiscretion he should make the breach so wide, that the resentment of the individuals concerned will render it almost irreparable; or that the public feelings will revolt at the idea of its being closed, and prevent him from ever being able to convince the Nation that the union could be dictated by virtuous principles.

He will not be deterred, by a dread of the trouble and risk of a contest with Opposition, nor even by the apprehension of general unpopularity, from bringing forward any proposal which he deems, on a serious and impartial review of all the circumstances of the case, conducive to the public interest. He will never decline to interweave into his plans an improvement suggested by his enemies, from a fear lest they should arrogate to themselves the merit of the whole ; nor will he reject or discountenance useful Bills introduced by them, from an unwillingness that the success of the measure should raise the proposers of it in general esteem. He will never support the unwise or iniquitous project of a colleague in office ; nor be led, on principles of *honour*, to defend it, notwithstanding his conviction of its demerit, after it has been carried into effect. Ministers have been known publicly and in unequalled terms to applaud those very measures of a co-adjutor, which they have freely condemned in private ; and to applaud them with warmth increasing, as it should seem, in proportion to their consciousness of the weakness of the defence. An upright Minister will not

improperly submit to the popular cry and ferment of the day ; nor ever give his sanction to what is radically immoral and unjust, however loudly it may be demanded by the voice of the Nation. If a sudden emergence requires him, in conformity to the discretion afforded him in certain cases by the spirit of the British Constitution, which deems particular laws subordinate to the general safety, to transgress the letter of existing statutes ; either in advising the issuing of royal proclamations ; in the application of public money, or in any other instance ; he will at once state the proceeding to Parliament, and ask for indemnity. He will not wait to be dragged before the tribunal of the public, and disgracefully compelled to accept from his enemies, as a boon, what he might have claimed as a debt from national gratitude. In proposing taxes, rules of internal police, financial or commercial regulations, those especially which involve a multiplicity of oaths, he will not be more attentive to the prospect of revenue, than to the liberty, the comfort, the manners, and the morals of the people. He will not impede the reform of Public Institutions and Establishments, nor of Parliament itself, from an ap-

prehesion left his ministerial patronage and influence should thus be reduced. He will maintain and act on the principles which he has formerly maintained, as long as he continues persuaded of their solidity; but if he should cease to believe them true, he will manfully avow the change in his sentiments, and the train of reasoning by which it has been effected. He will never suffer false shame, or a mistaken point of honour, to detain him in a wrong path, even though by abandoning it he should incur the charge of inconsistency.

For the sake of his own character, as well as on principles of general utility, he will be desirous, on every seasonable occasion, to draw aside that mysterious veil which commonly envelops the Statesman, and by the promise of concealment encourages him to criminality. He will studiously set an example of that system of publicity, which Ministers ought to be universally anxious to adopt; and which his successor in office may find means of avoiding, unless constrained to observe it by the authority of precedent. He will not involve his country in danger by unseasonable disclosures to Parliament, from the dread of subjecting
himself

himself to the misrepresentations of his enemies. But he will be prompt to communicate to either House, without sollicitation or delay, whatever he conceives may safely be laid before it; and whatever he deems himself for a time obliged in prudence to withhold, he will afterwards spontaneously and explicitly reveal. He will never refuse information through party spirit, through jealousy, through pride, through pique, or through resentment. Far from regarding the superintendence of Parliament as burthensome, or wishing to obstruct by open resistance, or to elude by subterfuges and evasions, the exercise of its inquisitorial control; he will rejoice that its vigilant sollicitude, however occasionally attended with symptoms of unnecessary distrust and apprehension, is employed in confirming him against temptations to misconduct, and in correcting the errors of his judgement. At all times, and under every circumstance, he will acknowledge and sincerely rejoice in his responsibility.

The same principles of integrity and candour which guide his conduct in his parliamentary capacity, will not be laid aside in private. He will entertain no animosity

against a friend who has occasionally withheld, or has altogether withdrawn his support ; nor will he ascribe to indirect views what may fairly be attributed to conscientious conviction. He will uniformly discourage in his adherents the disposition, too often found in servile and little minds, to blacken the private characters of their political antagonists, and of neutrals held in still greater abomination ; and will embrace every occasion of doing justice to their worth. He will beware of exciting suspicion by ill-timed and inconsiderate expressions, or by any instance of active conduct, that his professions of patriotism, of zeal for liberty, of disinterested solicitude for the public good, are merely his exterior garb ; a sort of robe of office ; a dress to be worn in Parliament, which, while it dazzles the beholders with its glaring brilliancy, conceals the real form and lineaments of the wearer.

7. In all his transactions on behalf of Great Britain with foreign nations, he will scrupulously regard the rules of strict and equal justice ; and, so far as the prior claim of his own country will admit, his benevolence and liberality will seek for a field of operation in every other.

other. The influence of these principles will be particularly manifest in his caution with respect to the commencement and prolongation of wars. Conscious that self-defence, or the defence of the just cause of an ally, is the only ground on which hostilities can be vindicated; conscious too that however prosperous the event may be, little benefit will result to the thousands by whose exertions, wounds and sufferings it has been purchased; and that however apparent may be the guilt of the Governors of the enemy, the punishment of it chiefly falls on their ignorant and unoffending subjects: he will never enter into a contest without a firm conviction that it is both equitable and necessary; nor ever continue it a moment after reasonable reparation and security can be obtained. In forming a treaty of alliance, he will explain his sentiments on these topics with the utmost perspicuity; and will never pledge his country to any measure which seems likely to lead her in the end to become an accomplice in the ambitious views of her confederates, by supporting them in unprovoked wars; or to comply with the suggestions of their revenge or their timidity, by continuing to prosecute wars originally indispensable,

after proper terms of pacification have been offered or would be accepted by their adversaries. He will gladly employ the good offices of his country in mediating peace between contending powers abroad, without rashly endangering its own tranquillity. If, during his administration, he is called upon to fulfil an engagement with a foreign power, contracted by some of his predecessors in office, which he perceives to be radically unjust; whatever may be the hazard to himself, he will refuse to comply. For is not he apprized that justice, sanctioned alike by natural reason and revealed religion, pronounces every covenant void, whether entered into by an individual or by a nation, which opposes her inviolable and antecedent laws? The house-breaker, who has promised his assistance in a burglary; the assassin, who has engaged to perpetrate a murder; is he bound, is he at liberty, to perform the contract? Nations are in this respect individuals to each other. It is also to the nation, as well as to the individual, that Religion addresses her command; "Thou shalt love thy neighbour as thyself; and do unto others as thou wouldst have others do unto thee."

Attention

Attention to the claims of mutual benevolence, and to the general happiness of mankind, will influence an upright Minister in adjusting treaties of commerce with foreign countries ; and prompt him to adopt such regulations as may be practicable for mitigating the horrors of future wars. A spirit of universal goodwill, strengthened and roused to action by a sense of Christian duty, will lead him to promote the discovery of unknown regions, and the civilization of their barbarous inhabitants. Considering himself as the Representative of the Public, considering the whole People as it were embodied in his person, and capable only through him of exercising an enlarged philanthropy ; he will look through the world with a discerning and judicious eye, in order to select proper objects to whom he may dispense their charity, and pour out the overflowings of domestic prosperity and affluence.

III. Under this head we are, in the first place, to advert to the motives by which a Minister ought to be actuated in estimating the propriety of resigning : and secondly, to the line of conduct to be adopted after his resignation.

1. Regard

1. Regard to the public good displaying itself in a fair and disinterested examination of every circumstance of the case, will determine a conscientious Minister with respect to the duration of his continuance in office. Exempt from personal views, unbiassed by solicitude for the aggrandizement of his family and friends, he will never seek to retain his post by ungenerous acts and disgraceful compliances; nor resort to sinister means of rendering his assistance necessary to his Sovereign, or to his colleagues. Nor, on the other hand, will he relinquish his station, from a dread of the odium or responsibility attached to measures in which he has acquiesced. He will not abandon a declining Ministry with a view to returning into office, after a short interval, with the prevailing party. Neither will he seek, by resigning, or by threatening to resign, to embarrass the proceedings of the Cabinet, through personal animosity towards some of its principal members. He will not feel himself at liberty to co-operate with an Administration whose fundamental system of policy he disapproves, whose most important measures he is unable to support. He will not remain an inefficient spectator of the progress of plans
in

in the formation of which he is not allowed an influence proportioned to his responsibility. He will not force his services on the public by the strength of his coadjutors and connections, if he perceives that, however generally his Fellow-ministers may be approved, he is himself unsupported by the confidence of the People. While his judgement and his conscience give their concurrence to the leading principles and proceedings of the other executive Ministers of the Crown, he will by no means think that differences of opinion on inferior points indispensably require him to secede. Nor will he deem himself necessarily obliged to retire by a parliamentary defeat, not even if it relates to a measure strictly ministerial, while on the whole he feels himself strong in national approbation. In many cases a secession on either of these grounds would be altogether unwarrantable. It might effect the dissolution of a Ministry, liable indeed to human error in particular instances, yet eminent above their competitors in uprightness and wisdom; discredited, it may be, by an occasional unpopular plan, but regarded by the country at large as the sheet anchor of its hopes. It might open the doors of office to ignorant, faithless,

and

and rapacious partisans ; who, before they could be expelled, might overthrow the wisest institutions of their predecessors ; might lay the foundations of their own future power by Acts of Parliament specially directed to that end, and by lavishing public money grants and reversions ; or might even endeavour to secure the permanence of their present authority by involving the Nation in foreign and domestic broils.

A wise and conscientious man will not endanger his character by continuing to bear a part in an Administration, which labours under a general stigma of corruption or imbecility ; unless he be able to rescue himself from the charge, and to preserve that confidence and esteem of the community, which are alike essential to the success of his present and future exertions in its service. Yet he will not on the other hand be such a niggard of his fame, as to be unwilling to submit to the risk of some temporary odium ; of some specious imputations, even, it may be, on the moral rectitude, as well as on the wisdom of his conduct ; if by that risk he can purchase the success of some momentous undertaking, and convert personal uneasiness

uneasiness into a source of happiness to his country.

He will not deem the care of his health and private concerns an excuse for any degree of remissness in attending to the duties of his station, unless such remissness was allowed by competent authority previously to his acceptance of the office, or as speedily afterwards as it took place; and adequate provisions were adopted to prevent any injury resulting on the whole from it to the public service. But if those provisions failed to answer the end proposed, he will feel it his duty to devise an effectual remedy, or immediately to resign his post. It is possible in particular emergencies that the public service may inevitably sustain some degree of detriment by his continuance in office, and yet a less than it would receive from his resigning at the moment. In that case, if clearly recognized by the proper judges, he may conscientiously retain his situation while the emergency subsists.

When he is once persuaded, on balancing the arguments on both sides, that duty summons him to retire, he will obey the call with
alacrity

alacrity and cheerfulness ; and will not cling to his office with that stubborn pertinacity, which argues a man unworthy to hold what he shews himself so reluctant to quit.

2. When divested of his employment, whether he withdraws from the busy world into the shade of privacy, or continues to serve his country as a Member of Parliament ; he will arm his breast against the stings of unsuccessful ambition ; and purify it from every emotion of bitterness and resentment against those who occasioned or who have profited by his fall. If he continues to act his part on the political stage, he will be on his guard against the bias of a secret hankering after emolument and power, usually predominant in those who have once been in possession of high official situations, and the most predominant in those who have occupied them for the longest time. He will not frame his parliamentary conduct with an insidious view to regain the eminence from which he has been cast down ; he will not seek popularity by disingenuous artifices ; he will not hoist a standard to collect the discontented, nor present himself as a leader to the factious. He will support, from his heart,
every

every measure of his successors which promises to promote the general welfare; however evidently it may contribute to raise them in the public estimation, and consequently to obstruct the return of himself and his friends to the helm of Government. When their proceedings are unjustifiable and unwise, he will oppose them with steady perseverance; but so as to prove that he opposes not the Members, but the Politics of Administration. He will reflect that his country, though no longer entrusting him with the supreme direction of her affairs, regards him, in consequence of the station which he has filled, as in some measure the appointed inspector and superintendant of the present Ministers. The duties of that honourable employment he will vigilantly and faithfully discharge. But he will discharge them as a public servant exercising a public trust. He will not harass his competitors, victorious in the contest for popular favour, with vexatious and unmerited opposition; nor, by thwarting their views and obstructing their plans, revenge on the Nation at large his private wrongs and his private disappointments.

C H A P. VIII.

ON THE DUTIES OF NAVAL AND MILITARY
OFFICERS.

THAT an individual may resort to the use of force in behalf of himself, or of others not averse to receive his assistance, when force is necessary for the purpose of repelling or of preventing oppression, or of obtaining reparation for injuries sustained, is one of the fundamental principles of morality suggested by natural reason. It is a principle which may be applied separately and successively to the case of every individual; and, consequently, to the individuals composing a Nation. Hence appears the natural right of a Nation to enter, under certain circumstances, into a war against other Nations in support of its own rights, or of the rights of other communities whom it undertakes to protect. Hence too appear the limits by which that right is naturally circumscribed. Neither the uncon-

4

nected

ned individual nor the Nation is authorised to employ force, until peaceable applications for redress have been fully tried, and found ineffectual; nor to persist in the use of it, if a fair probability appears that the renewal of negotiation would prove successful; nor to carry it further than is requisite for the purpose of obtaining reasonable indemnification and security. Farther, as no man by becoming a member of a Community, or by any other step, can exempt himself from the natural obligation of benevolence; the Nation, conformably to the motives which conscience would suggest to the individual, is bound in point of moral duty to relax, as far as a prudent regard to safety will permit, in the claims which in strict justice it might impose on its adversaries, when an end may thus be put to the contest; rather than by rigorously pushing its equitable demands to the utmost, to introduce or prolong the calamities of war. It is true that many reasons may exist, which may render it impossible that the same degree of forbearance which might take place without danger in the case of two individuals, whether unconnected by social ties, or belong-

ing to the same Community, can be safely shewn by one State towards another. The real characters and designs of the Governors of the adverse Nation cannot be thoroughly known; those Governors may speedily give place to others less known; experience justifies the conclusion that policy and interest, rather than good faith and duty, will be found to guide the conduct of them all; the magnitude of the interests involved, at least the multitude of persons who share in them, renders caution and steady firmness peculiarly requisite. But though these and other similar arguments indicate the hazard of unwarily receding from necessary demands; they are far from proving that no forbearance is to be shewn by one State towards another, or that much more forbearance ought not to be shewn than is commonly displayed.

It has been satisfactorily demonstrated by other writers, that Christianity does not impair the natural right of self-defence; that John the Baptist's admonition to the soldiers, "to be content with their wages," implied their continuance in the legion; that Christ rewarded

warded the faith of the Centurion without reproving in the slightest degree his known profession; that Cornelius, the first of the Gentile converts, received no direction from St. Peter to quit the army; and that the seemingly passive precepts of the Gospel, not to resist injuries, when smitten on one cheek to turn the other, when robbed of our coat voluntarily to give our cloak also, and any similar declarations, are to be understood by us as they would assuredly be understood by Christ's hearers, accustomed to the figurative mode of teaching prevalent in the East; namely, as prohibiting every species of injustice, malice, and revenge, and as inculcating the purest principles of benevolence and forbearance; but as permitting, under the influence of those principles, the repression of serious injuries by force, when nothing short of force would be effectual.

War then, in certain emergencies, being admitted to be no breach of Moral or of Christian duty, we are now to consider the duties of those who are to carry it on.

Officers employed in the defence of their
T 2
country,

country, whether by sea or by land, whether in a higher or in a lower sphere, are exposed to many similar temptations, and called to the performance of the same moral duties. It is of those temptations and duties common to the naval and military profession that the present chapter is designed to treat. And such of the subsequent remarks as are not obviously restrained to particular descriptions of men, are meant to be applied generally to persons in either profession, whatever their rank and station may be.

The observations about to be advanced respecting the moral duties of an Officer will of course be free from all reference to professional tactics, and will be confined to the following particulars: uprightness and activity in discharging the immediate functions of his station; his general conduct towards those under his command; his proceedings towards enemies, and the subjects of neutral powers; and his conduct in private life.

I. Whatever be the line of service or the rank in which an Officer is placed, the most obvious

obvious of all the moral obligations thence incumbent on him is that of faithfully performing the immediate duties of his post. A man of integrity and reflection will blush to receive a salary from the public, without making that return to his country, which, by accepting his commission, he has pledged himself to render. He will therefore apply with assiduity and perseverance to the several branches of military or naval service, in which his station requires him to bear a part. He will not think it sufficient barely to attain to such a degree of proficiency in the duties of his department, as may secure him from the reprehension of his superiors. He will not be contented with acquiring that facility in practice which is the result of habit; and neglect the study of the theoretical and scientific principles of his profession. He who regards his occupation as a mere mercenary trade, will aim only at doing what is absolutely necessary, and at doing that by rote. But he who is steadfastly bent on discharging his duty to God and man, and, in due subordination to that predominant desire, wishes to distinguish himself by genuine merit in his profession, will be solicitous to be prepared for

the various and sudden contingencies by which an Officer may be overtaken in the vicissitudes of war; and to be able to adapt the fundamental rules of the service to unforeseen and critical emergencies. He will resolve to consider himself through life as a learner. He will not disregard the advice and suggestions of Experience, though they proceed from a person of rank inferior to his own. Too wise to contract a fondness for novelties only because they are new; he will shun the opposite extreme, more common among professional men, of pertinaciously adhering to ancient practices, and resisting rational and seasonable improvements. He will study strict method in all branches of employment, as the only means of having business done well, at the cheapest rate, and in the shortest possible time. The latter circumstance is often essential to the success of warlike operations; and in many cases, as when troops encumbered with stores and baggage are to be removed from an approaching superiority of force, or a fleet is to be repaired in an insecure or unhealthy harbour, the delays which result from a confused and unsettled mode of proceeding

ceeding may occasion the loss of multitudes by the sword or by disease. A good Officer will not trust to the inspection or agency of another what he ought to examine or conduct in person. Instead of declining what is actually comprehended within his own province, he will explore its utmost limits for proper opportunities of acquiring additional knowledge and skill, and of improving himself in all the different functions which he may be called upon to discharge. By accustoming himself on common occasions to alertness and activity, he will prevent greater exertions in more critical seasons from being difficult and oppressive to him. Habits of carelessness once contracted are continually encroaching more and more; and, though at first extending only to trifles, gradually draw matters of the highest moment within the sphere of their influence. And whenever, by being unwarily indulged, they settle into confirmed indolence; they become the sources of every species of professional demerit, and of every kind of vice.

In the purchase and expenditure of provisions and ammunition, and in every instance

when public money, or what is procured with public money, is committed to the disposal of an Officer; he is bound not merely to exhibit an example of the most scrupulous integrity, but also of every degree of œconomy compatible with the public good. Opportunities of fraud will frequently occur, especially on detached expeditions and remote stations, to those who are inclined to make use of them. The sums which in some former wars have been purloined from this country by peculation, or lost to it by negligence and mismanagement, are said by those who have had ocular demonstration of the facts to be far more enormous than is generally imagined. Fraud however, or collusion, practised to the injury of the public by men in offices of trust, is certainly not less sinful than similar proceedings towards private individuals. And a neglect of due superintendence over subordinate managers of public stores is highly blamable in any one to whom that superintendence is committed (a).

In

(a) By the custom of the Navy, every kind of store is in charge of the particular warrant officer to whose department it belongs, Ordnance stores, for example, are under the
the

In every branch of professional conduct an upright Officer will steadily fix his attention on the public good ; and regard himself as bound to promote it by all honest means and to the utmost of his power, as far as his department extends. By this rule, and not by the

the charge of the gunner ; carpenter's stores under that of the carpenter ; cordage, sails, &c. under that of the boatswain. Nothing is expended for the use of the ship without an order, and without its being regularly entered in a book, which ought to be examined monthly by the captain and master, and vouched by their signature. The officers however, to whom such valuable stores are entrusted, are often extremely illiterate, and unable to write. Their accounts therefore, unless regularly examined, are not to be depended upon. Yet, as I am informed from the very first authority, it is not unusual with captains to defer the examination of them for months, perhaps till all traces of the transactions are lost, and to sign them without enquiry. Instances of habitual dishonesty, by which the public is plundered to a very large amount, of course occur among warrant officers, as among men of other professions. And the temptation is so great, that many who set out with upright views are found ultimately to give way to it. These considerations strengthen the obligation to attention and vigilance on the part of the superior officers. The usage too of the service is such as to have a tendency to ensnare men of every disposition. Thus, if a captain wishes to have his ship supplied with a larger proportion of any particular

... than is allow
... whenever the fi
... depending some art
... can procure what is r
... done without
... have been many instan
... At any rate,
... are placed, finding I
... with the captain's
... according to the
... which is need
... the same liberty I
... targets.

... was part of the naval fer
... The opinio
... and on all other subj
... necessary, was deliv
... 1883.

... to the mill
... in ambient

ence to lawful authority is the foundation of military excellence. Whether the order comes from a superior respected for his experience and talents, or from a raw youth raised by connections and interests over the heads of his older and more deserving competitors; whether it proceeds from a person endeared to him who receives it by acts of kindness and friendship, or rendered obnoxious by injuries and diffensions; it is to be obeyed with equal alacrity. Indeed, it is seldom if ever found that personal motives, such as have been recited, bias the conduct of officers in subordinate stations. The public service, however, has frequently sustained great detriment from the jealousies and animosities of rival commanders. And it has repeatedly happened, that when a General and an Admiral have been joined in a common expedition, and thus made in some measure dependent on each other, they have been very blamably set at variance by a difference of sentiment respecting the plans to be adopted; a difference aggravated by partiality to their respective lines of employment and customary modes of operation. The only circumstance likely to seduce
inferior

inferior officers from an active obedience to those of higher rank is the spirit of party; which combining professional with political considerations, has sometimes been powerful enough to invade almost every individual in a fleet or army. It is recorded of Admiral Blake, that when he was employed in the middle of the last century in the wars against the Spaniards, he continually inculcated on his Captains the duty of combating with unabated exertions the foreign enemies of the State; whatever might be their own private opinions and wishes as to the civil broils which divided their countrymen at home, or the persons into whose hands the Government had devolved. If this observation was just in the case of internal dissensions of such magnitude as those which at that period agitated Great Britain; it may surely be applied with additional force to those party conflicts on topics of far inferior importance, which in the present settled condition of the Constitution of this kingdom are, we trust, the only party conflicts likely to arise.

It has been already observed, that the obedi-

dience which is the duty of an Officer is prompt and punctual obedience to *lawful* authority. This statement implies that the thing commanded must be lawful ; for otherwise the authority which presumes to enjoin it is so far unlawful. Were an Officer then directed by his superiors to do what is contrary to the received laws of War and of Nations ; to the laws and institutions of his country ; or to the laws of God ; his compliance with the order would be criminal. These limitations are the more necessary to be impressed on the reader, as the habits of military discipline, and of that indiscriminate submission which in the common routine of service is highly meritorious, have frequently ensnared the understanding and the conscience ; and have led Officers to perpetrate, under false conceptions of duty, the most flagrant acts of injustice. He who would have rejected with indignation and abhorrence an order from his chief to rob a single traveller on the highway, hesitates not to bear a part at his direction in attacking an unoffending Nation, ravaging its territories, burning its towns, massacring its defenders, and reducing thousands, perhaps millions, of innocent

cent men into bondage. The former partition of Poland by the troops of Russia, Austria, and Prussia, in blind obedience to the iniquitous commands of their Sovereigns, and a succession of recent events in that unhappy country of a similar nature, are two out of many examples which prove the necessity of an Officer's ever bearing in mind the rule which has been stated. Let him remember, that whatever deference he may owe to the Government under which he lives, and to the commanders to whom he is subordinate, his first submission is due to his Maker. Let him remember, that no human authority can change the eternal distinction between right and wrong; or be pleaded in excuse by any man for committing what his conscience deliberately disapproves. If he is ordered to co-operate in any unjustifiable undertaking, let him at all hazards refuse to comply. And if not only the loss of professional honours and emoluments, but severe punishment and even death itself should stare him in the face in consequence of his refusal; let him not forget the unequivocal directions which his Saviour and final Judge has already addressed to all who are reduced

reduced to the alternative of offending God or Man. "Fear not them which kill the body, " and after that have no more that they can do. " But I will forewarn you whom you shall " fear ; fear him, who, after he hath killed, " hath power to cast into hell : yea, I say unto you, fear him." Luke, c. xii. ver. 4, 5.

From these considerations it follows, that every individual Officer, who is called into active service, is bound to investigate the justice of the war in which he engages, to the utmost extent of his abilities and information. He is not precipitately and on slight surmises to relinquish the post in which Providence has placed him. If the matter appears ambiguous, and his most careful reflection and enquiries leave him still in doubt ; something may very properly be conceded, and more or less according to the circumstances of the case, to the opinion of those, who have better opportunities than he possesses of knowing the real origin and grounds of the contest. The lower his rank is, the less likely is he to have opportunities of acquiring knowledge on the subject, which can reasonably be opposed to the judgment of men in higher stations. Whatever be
his

when public money, or what is procured with public money, is committed to the disposal of an Officer; he is bound not merely to exhibit an example of the most scrupulous integrity, but also of every degree of œconomy compatible with the public good. Opportunities of fraud will frequently occur, especially on detached expeditions and remote stations, to those who are inclined to make use of them. The sums which in some former wars have been purloined from this country by speculation, or lost to it by negligence and mismanagement, are said by those who have had ocular demonstration of the facts to be far more enormous than is generally imagined. Fraud however, or collusion, practised to the injury of the public by men in offices of trust, is certainly not less sinful than similar proceedings towards private individuals. And a neglect of due superintendence over subordinate managers of public stores is highly blamable in any one to whom that superintendence is committed (a).

In

(a) By the custom of the Navy, every kind of store is in charge of the particular warrant officer to whose department it belongs. Ordnance stores, for example, are under the
the

Officer decline on the plea of conscience to undertake the service enjoined ; there seem to be no grounds, if the sincerity of his plea can be ascertained, on which his discharge can be refused ; nor any, if it should be refused, on which his compliance (c) can be justified.

An Officer charged by an Administration, to whose political proceedings he is adverse, with the conduct of an expedition by sea or land, ought to be constantly aware of the temptations to which he is exposed in consequence of the difference of sentiment between himself

themselves, nor compatible with the common feelings of humanity. Thus, when Louis XIV ordered the Palatinate to be laid waste, it may be questioned whether an officer employed on the expedition ought not in conscience to have resigned, though he believed the war to be in the main just on the side of France, rather than to have borne a part in such horrors.

(c) The British laws shew in several instances a very laudable attention to the conscientious scruples of particular classes of subjects ; and exempt them either altogether, or as far as is deemed consistent with the public good, even from the common obligations and duties of citizens, when the parties seriously believe that the performance of them would be contrary to their duty to God. Thus Quakers, who deem an oath unlawful, are allowed to give evidence in civil cases on their simple affirmation ; and for a similar reason are exempted from bearing arms.

when public money, or what is procured with public money, is committed to the disposal of an Officer; he is bound not merely to exhibit an example of the most scrupulous integrity, but also of every degree of œconomy compatible with the public good. Opportunities of fraud will frequently occur, especially on detached expeditions and remote stations, to those who are inclined to make use of them. The sums which in some former wars have been purloined from this country by peculation, or lost to it by negligence and mismanagement, are said by those who have had ocular demonstration of the facts to be far more enormous than is generally imagined. Fraud however, or collusion, practised to the injury of the public by men in offices of trust, is certainly not less sinful than similar proceedings towards private individuals. And a neglect of due superintendence over subordinate managers of public stores is highly blamable in any one to whom that superintendence is committed (a).

In

(a) By the custom of the Navy, every kind of store is in charge of the particular warrant officer to whose department it belongs. Ordnance stores, for example, are under the

In every branch of professional conduct an upright Officer will steadily fix his attention on the public good ; and regard himself as bound to promote it by all honest means and to the utmost of his power, as far as his department extends. By this rule, and not by the

the charge of the gunner ; carpenter's stores under that of the carpenter ; cordage, sails, &c. under that of the boatswain. Nothing is expended for the use of the ship without an order, and without its being regularly entered in a book, which ought to be examined monthly by the captain and master, and vouched by their signature. The officers however, to whom such valuable stores are entrusted, are often extremely illiterate, and unable to write. Their accounts therefore, unless regularly examined, are not to be depended upon. Yet, as I am informed from the very first authority, it is not unusual with captains to defer the examination of them for months, perhaps till all traces of the transactions are lost, and to sign them without enquiry. Instances of habitual dishonesty, by which the public is plundered to a very large amount, of course occur among warrant officers, as among men of other professions. And the temptation is so great, that many who set out with upright views are found ultimately to give way to it. These considerations strengthen the obligation to attention and vigilance on the part of the superior officers. The usage too of the service is such as to have a tendency to ensnare men of every disposition. Thus, if a captain wishes to have his ship supplied with a larger proportion of any particular

the suggestions of private inclination or convenience, he will conduct himself whenever the orders of his superiors leave him to the exercise of his own discretion. When those orders are precise and positive, he will implicitly conform to them. Prompt and punctual obedi-

ticular kind of stores, for use or ornament, that is allowed, he can cause an exchange to be made, whenever the situation of the ship will admit; and, by expending some articles which he does not greatly want, can procure what is more desirable to him. This is frequently done without any intention of fraud; though there have been many instances wherein great frauds have followed. At any rate, the officer in whose charge the stores are placed, finding himself obliged to make his accounts tally with the captain's disposition, instead of being drawn up according to the real expenditure, soon loses that correctness which is necessary in such accounts; and learns to take the same liberty himself, when it answers any selfish purpose.

The mode of conducting this part of the naval service evidently appears to require alteration. The opinion of the Navy Board on this subject, and on all other subjects wherein the check of that Board is necessary, was delivered to the Board of Admiralty in the year 1783.

The facts stated in this note may suggest to the military officer some admonitions as to the duties incumbent on him in various circumstances and situations in his own profession, resembling those in the naval line which have been mentioned.

ence

ence to lawful authority is the foundation of military excellence. Whether the order comes from a superior respected for his experience and talents, or from a raw youth raised by connections and interests over the heads of his older and more deserving competitors; whether it proceeds from a person endeared to him who receives it by acts of kindness and friendship, or rendered obnoxious by injuries and dissensions; it is to be obeyed with equal alacrity. Indeed, it is seldom if ever found that personal motives, such as have been recited, bias the conduct of officers in subordinate stations. The public service, however, has frequently sustained great detriment from the jealousies and animosities of rival commanders. And it has repeatedly happened, that when a General and an Admiral have been joined in a common expedition, and thus made in some measure dependent on each other, they have been very blamably set at variance by a difference of sentiment respecting the plans to be adopted; a difference aggravated by partiality to their respective lines of employment and customary modes of operation. The only circumstance likely to seduce
inferior

cent men into bondage. The former partition of Poland by the troops of Russia, Austria, and Prussia, in blind obedience to the iniquitous commands of their Sovereigns, and a succession of recent events in that unhappy country of a similar nature, are two out of many examples which prove the necessity of an Officer's ever bearing in mind the rule which has been stated. Let him remember, that whatever deference he may owe to the Government under which he lives, and to the commanders to whom he is subordinate, his first submission is due to his Maker. Let him remember, that no human authority can change the eternal distinction between right and wrong; or be pleaded in excuse by any man for committing what his conscience deliberately disapproves. If he is ordered to co-operate in any unjustifiable undertaking, let him at all hazards refuse to comply. And if not only the loss of professional honours and emoluments, but severe punishment and even death itself should stare him in the face in consequence of his refusal; let him not forget the unequivocal directions which his Saviour and final Judge has already addressed to all who are reduced

reduced to the alternative of offending God or Man. "Fear not them which kill the body, and after that have no more that they can do. But I will forewarn you whom you shall fear; fear him, who, after he hath killed, hath power to cast into hell: yea, I say unto you, fear him." Luke, c. xii. ver. 4, 5.

From these considerations it follows, that every individual Officer, who is called into active service, is bound to investigate the justice of the war in which he engages, to the utmost extent of his abilities and information. He is not precipitately and on slight surmises to relinquish the post in which Providence has placed him. If the matter appears ambiguous, and his most careful reflection and enquiries leave him still in doubt; something may very properly be conceded, and more or less according to the circumstances of the case, to the opinion of those, who have better opportunities than he possesses of knowing the real origin and grounds of the contest. The lower his rank is, the less likely is he to have opportunities of acquiring knowledge on the subject, which can reasonably be opposed to the judgment of men in higher stations. Whatever be
his

his rank, let him remember that the knowledge which he has acquired must probably be in some points defective ; and exercise his judgement with modesty and candour. But, after making all becoming allowances for unknown circumstances, if he should be thoroughly convinced that his own country is the culpable aggressor in the quarrel, or should deem the probability to be very greatly on that side ; it is his indispensable duty to resign his employment, whatever false honour, or personal and interested motives, may suggest to the contrary. Will it be said that it is his part to obey, and leave the State to answer for the guilt ? This is not the argument of a considerate man, or of a Protestant. Reason and Scripture are equally outraged, whether it be a State, or a Pope, that requires to have the management of the conscience of the subject. The State, on whatever principles it may claim his obedience, cannot exempt him from that which he owes to his God (*b*). And should the naval or military
Officer

(*b*) Cases may occur in despotic Governments, which I trust never will in ours, when it might be the duty of an Officer to resign his post, though satisfied as to the justice of the war ; namely, when the means used to procure success involved dreadful severities neither necessary in themselves,

Officer decline on the plea of conscience to undertake the service enjoined ; there seem to be no grounds, if the sincerity of his plea can be ascertained, on which his discharge can be refused ; nor any, if it should be refused, on which his compliance (c) can be justified.

An Officer charged by an Administration, to whose political proceedings he is adverse, with the conduct of an expedition by sea or land, ought to be constantly aware of the temptations to which he is exposed in consequence of the difference of sentiment between himself

themselves, nor compatible with the common feelings of humanity. Thus, when Louis XIV ordered the Palatinate to be laid waste, it may be questioned whether an officer employed on the expedition ought not in conscience to have resigned, though he believed the war to be in the main just on the side of France, rather than to have borne a part in such horrors.

(c) The British laws shew in several instances a very laudable attention to the conscientious scruples of particular classes of subjects ; and exempt them either altogether, or as far as is deemed consistent with the public good, even from the common obligations and duties of citizens, when the parties seriously believe that the performance of them would be contrary to their duty to God. Thus Quakers, who deem an oath unlawful, are allowed to give evidence in civil cases on their simple affirmation ; and for a similar reason are exempted from bearing arms.

his rank, let him remember that the knowledge which he has acquired must probably be in some points defective ; and exercise his judgement with modesty and candour. But, after making all becoming allowances for unknown circumstances, if he should be thoroughly convinced that his own country is the culpable aggressor in the quarrel, or should deem the probability to be very greatly on that side ; it is his indispensable duty to resign his employment, whatever false honour, or personal and interested motives, may suggest to the contrary. Will it be said that it is his part to obey, and leave the State to answer for the guilt ? This is not the argument of a confederate man, or of a Protestant. Reason and Scripture are equally outraged, whether it be a State, or a Pope, that requires to have the management of the conscience of the subject. The State, on whatever principles it may claim his obedience, cannot exempt him from that which he owes to his God (*b*). And should the naval or military
Officer

(*b*) Cases may occur in despotic Governments, which I trust never will in ours, when it might be the duty of an Officer to resign his post, though satisfied as to the justice of the war ; namely, when the means used to procure success involved dreadful severities neither necessary in themselves,

Officer decline on the plea of conscience to undertake the service enjoined ; there seem to be no grounds, if the sincerity of his plea can be ascertained, on which his discharge can be refused ; nor any, if it should be refused, on which his compliance (c) can be justified.

An Officer charged by an Administration, to whose political proceedings he is adverse, with the conduct of an expedition by sea or land, ought to be constantly aware of the temptations to which he is exposed in consequence of the difference of sentiment between himself

themselves, nor compatible with the common feelings of humanity. Thus, when Louis XIV ordered the Palatinate to be laid waste, it may be questioned whether an officer employed on the expedition ought not in conscience to have resigned, though he believed the war to be in the main just on the side of France, rather than to have borne a part in such horrors.

(c) The British laws shew in several instances a very laudable attention to the conscientious scruples of particular classes of subjects ; and exempt them either altogether, or as far as is deemed consistent with the public good, even from the common obligations and duties of citizens, when the parties seriously believe that the performance of them would be contrary to their duty to God. Thus Quakers, who deem an oath unlawful, are allowed to give evidence in civil cases on their simple affirmation ; and for a similar reason are exempted from bearing arms.

and his employers, and in proportion as that difference has been actively shewn in Parliament, or elsewhere. It is not sufficient that he exerts himself faithfully to promote the undertaking which he is sent to accomplish. Let him act with fairness to Ministers, and judge with candour of their behaviour towards him. Let him not ply them with unnecessary demands through a suspicion of their unwillingness to support him, and a desire to prove how far they will listen to his applications. If he is disappointed as to receiving supplies, or denied what he deems no more than a proper reinforcement; let him not hastily conclude without further grounds that he is purposely neglected or sacrificed. Let him remember that the disappointment may have arisen from the uncontrollable power of the elements; and the denial from a conviction that the additional force was needless, or could not be afforded without abandoning an object more interesting to the public. And towards his political friends let him observe, as scrupulously as the most cautious of those who employ him could wish, an impenetrable silence with respect to every particular of the measures which he is to pursue.

2. We proceed to the general conduct of an Officer towards those under his command.

The duty of training up the inferior Officers and private men to active service, and inuring them by instruction and exercise to habits of discipline, may not improperly be considered as having been comprehended under the preceding head. But the success of an Officer in discharging that duty will greatly depend on his customary behaviour towards all who are subordinate to him ; and on his paying that unremitting regard to their welfare, which the good of the service demands, and the principles of morality enjoin.

His brother Officers placed under his control let him treat with liberal and engaging attention. Let him ever be ready to do them acts of kindness, and to facilitate, by his advice and assistance, their pursuit of professional knowledge. Let him preserve over them the authority which his station gives to him, and the interests of discipline require him to maintain ; but let him not encroach on their rights by exceeding the limits of his jurisdiction ; nor

render himself and the service odious to them by a rough and overbearing deportment. Let him remember too, that ill-usage from a superior leads those who suffer it to retaliate on others below them; and that they who have been most accustomed to crouch under tyranny, have become the greatest tyrants in their turn. Besides, if the Midshipman is treated with insolence by his Captain, or the Ensign by his Colonel; how shall the Sailor and the Soldier respect them? And if they respect them not, subordination and obedience are at an end. If there be any Officer who has a claim rather than another to the countenance and protection of his Commander; it is he who, having risen by his desert from an humble station, finds himself treated with scorn and neglect by his associates vain of their birth and accomplishments, though destitute of his valour, abilities, and experience; or he who entering into the service in the opening of youth, perhaps even before the years of childhood are terminated, requires additional instruction (d) on many important subjects;

(d) "The above-mentioned boy, with four others, comes
" into

subjects; and unless guarded by the counsels and superintending care of a Superior, will in all probability be seduced into habits of vice by the example, or the ridicule, of unprincipled companions.

An Officer ought studiously to beware of talking frequently and largely of himself and his exploits. This custom, if indulged, will

“ into my cabin every morning. After having read the
 “ psalms and gospel lesson, they have two hours of instruc-
 “ tion from a young man whom I have on board; a good
 “ teacher of arithmetic, mathematics, &c. ; and also from
 “ seven till half-past eight in the evening; so that they could
 “ not be at a better school. Their catechism too is attended
 “ to. I think this ought to be a matter of conscience with all
 “ who have young people under their care. Had it been al-
 “ ways, I believe we should see the good effects in the world.
 “ Ignorance is certainly one of the greatest causes of infi-
 “ delity. The effects of religious instruction are apparent
 “ in these children. May God give his blessing to it !”

The preceding extract from a private letter written by a Captain of a man of war, whose services have recently been rewarded in the most public and distinguished manner by his Sovereign, and communicated to me by the person to whom it was addressed, shews that Captains have it very greatly in their power to promote the instruction of youth on shipboard; and that there are those who do promote it in the best manner, and from the best motives.

gradually lead him to esteem himself too highly, and others too little; to detract from their merit; and occasionally to treat them with manifest contempt. It will contribute not less even than inebriety, or a captious temper, to entangle him in disputes and quarrels; and ultimately to involve him in the supposed disgrace of refusing a challenge, or in the positive sin of accepting it. To this embarrassing alternative an Officer who conducts himself conscientiously and with prudence can scarcely ever be reduced. But if reduced to it, let him remember that it is embarrassing merely in consequence of the mistaken ideas respecting honour prevalent in society; and not from any doubts that can be entertained as to what is required of him by the laws of his Creator. For what are the pleas of the Duellist for taking the cognizance of his cause into his own hands? That his country has not provided legal means of redress; or that disgrace will attend him either if he resorts to them, or if he suffers the matter to pass unnoticed. The former apology can rarely be alleged with truth when the offence is real and of moment. And, if admitted to be true, would it vindicate him for seeking redress

redress in a way which the law expressly forbids? The second tends, as far as it obtains in practice, to subvert the empire of law universally, and to establish caprice and prejudice paramount in its place. Further; do not the Scriptures enjoin obedience to the law of the land? Do not they also peremptorily prohibit murder? And do they not fix the guilt of murder on every attempt to take away life, otherwise than according to the authority of law? Yet a *Gentleman*, it seems, if he has offered or received the most trifling injury; if he has chanced to utter, or to be addressed with, some unguarded expression; is to forget all former ties of connection and of friendship, all future consequences, however distressing, to his family or to that of his opponent, which may attend the result of the contest; is to seek the other party's life, to add to this crime that of endangering his own; and thus to set divine and human ordinances at defiance, lest his character should suffer by absurd and unmerited imputations. Character, as highly important to usefulness, is undoubtedly to be defended with solicitude by all justifiable means; but it is to be hazarded, and even

team of soldiers and seamen. How indeed shall that Officer be either feared or beloved, who shews himself the slave of levity, fickleness, and caprice? That happy union of firmness exempt from supercilious and tyrannical arrogance, with freedom guarded from indiscreet familiarity, which at once commands respect and wins the heart, is not to be attained without trouble, nor without an accurate observation of the character and manners of the different

question. The other readily answered, that he had ; but without the slightest idea of insult. The rest of the Officers still insisted on the necessity of their fighting ; but the two friends were fully resolved to the contrary. In the evening, when they were all assembled at the mess, the subject was introduced again : and the young Officers perceived a pointed coolness in the behaviour of their associates. Early the next morning he who had committed the blunder at the game went to his friend, whom he found in bed ; and said to him, “ I have passed a sleepless night ; I see that I am branded with infamy ; let us go “ to the ramparts.” The other replied, that, for his part, he had slept well, and that his mind had been undisturbed ; but that, if his friend thought it requisite, he would attend him. When arrived at the ramparts, they embraced each other, and drew. And having agreed to die together on the spot, the one stood motionless, pointing his sword to the other’s breast ; while the latter, in piercing his friend with a fatal thrust, received a mortal wound himself.

classes

custom so irrational, savage, and unchristian ; it would fall into universal discredit, and speedily be ranked, as it deserves, with the trial by ordeal, and other exploded institutions of Gothic barbarity.

Steadiness of demeanour, and uniformity of conduct, are found by experience not only to secure the submission, but to conciliate the esteem

Officers, about twenty-four years of age, and belonging to the Garrison, were remarkable for their intimate friendship. One day, when they were in a coffee-house, one of them engaged in a game at backgammon with a third person. In the course of play he committed a blunder. His friend, who was looking on, exclaimed familiarly, O how stupid you are ! (Oh que tu es bête !) When the game was concluded, some other Officers of the Corps, who had been standing near, came up to him who had been playing ; and asked him if he had not observed the insult which had been offered to him. He replied in the negative. The Officers said, that having been unwilling to interrupt the game, they had remained silent at the time ; but that they must now repeat to him the injurious expressions which had been addressed to him. And having done so, they added, that he would stand disgraced for ever in the estimation of the corps and of the world if he did not exact satisfaction. The young Officer, turning to his friend, asked him, with perfect good-humour, whether he had used the words in question.

ments on their hour of meals and rest. He will never expose their lives to unnecessary risk in action, or out of it; nor permit himself to acquire the horrid habit of being careless of human bloodshed. He will watch with incessant solicitude over their health; and will not forget how greatly its preservation depends on the salubrity of their food, the sufficiency of their clothing, their uniform regard to cleanliness, and the use of wholesome precautions against infection (*f*). He will gladly befriend them in their own little pecuniary concerns; as in establishing the validity of their wills by his attestation; in the transfer of a part of their gains to their absent families; in the recovering of wages or prize-money withheld from them; and in all those cases in which the private man finds the aid of his Officer necessary to enable him to secure or to dispose of the fruits of his labour.

(*f*) The Captain of a man of war, and perhaps the Colonel of a regiment, has it in his power to do more towards keeping his men in health than the Surgeon. The truly meritorious attention paid by the late Captain Cook to that object, and the extraordinary success with which it was providentially accompanied, are facts universally known. His exertions are worthy of universal imitation.

When

When sickness, casualties, or wounds, give them a peculiar claim to his tenderness, he will always adopt the most speedy, proper, and effectual method of assisting each individual ; whether it be by taking care that he be supplied with every kind of succour which his situation requires, and existing circumstances admit of being furnished ; or by supporting his claim to be received into some of the asylums provided by the public for those who are disabled in the defence of their country. He will not permit acts of fortitude and humanity, nor any other instances of exemplary conduct by which particular individuals have distinguished themselves, to pass without his praise, or to escape from his memory ; and will studiously give to latent merit, even in the lowest station, an opportunity of displaying itself, and of gaining advancement.

If an Officer's rank and station require him to take a part in the impressing of seamen, or in the raising of recruits for the land service ; in the former case let him conduct himself with every degree of humanity which can be introduced into so very objectionable a method

thod of manning the Navy ; in the latter, let him not abet or connive at the knavish and illegal methods frequently adopted by Sergeants and their confederates, to draw the ignorant and unsuspecting into their snares. And let him not indulge even for a moment the most distant wish to screen any of his agents from justice, who shall hereafter endeavour, as some are said to have endeavoured heretofore, to procure men for the service by means, which, as far as they extend, may be compared to the villany of the slave trade.

In taking cognizance of faults committed by the people under his control, an Officer ought equally to avoid that supine carelessness which invites future offences ; and that unrelenting and tyrannical severity which confounds oversights with deliberate guilt, and makes no allowance for peculiarity of circumstances and situation. Never let him grudge the pains of investigating a complaint to the bottom ; never let him expose himself to the suspicion of pique, partiality and unfairness. In sentencing to punishment, let him maintain discipline and subordination, without
passion

passion or unnecessary rigour. In cases where his rank gives latitude to his discretion, let him imitate the examples of those Officers, who by their prudence have devised methods of manifesting their displeasure against delinquents, and subjecting them to shame and constraint, which have in a great measure superseded, except in very flagrant cases, the necessity of severer (*g*) chastisement. Let him not acquire a habit of correcting with his own hand private men whom he happens to detect in small transgressions. On Court-Martials let him remember justice and his oath.

There are various stations in the Navy and Army which confer on those who occupy them a right of patronage (*b*) and promotion. Every such right ought to be considered as a

(*g*) I allude to the wise and successful methods which have been occasionally practised by Captains of men of war.

(*b*) A Captain of a man of war is invested with the power of appointing Midshipmen, and all who are not warrant officers. An Admiral, if commander in chief of a fleet, may promote even to the command of ships of the line. Similar privileges in the Army are possessed by Military Officers.

public

public trust, and exercised with a strict regard to desert. He who from interested views or private attachment promotes a favourite, a friend, or a relation, to a post of which he is unworthy, betrays sordid principles or an unskilful judgement; discourages meritorious exertion throughout the service; and perhaps prepares for his country some severe stroke to be experienced in distant years. Officers whose rank does not invest them with the disposal of preferment, have yet the power of granting or refusing many little indulgences to their men. These should never be withheld from such as deserve them, when they can be allowed consistently with the public good. In bestowing charity, an Officer ought to regard the merit as well as the distress of the person assisted; and when he confers any spontaneous act of kindness somewhat out of the common way (*i*), he ought to regard it almost exclusively.

(*i*) I was lately informed of a Lieutenant Colonel of a regiment, who has had many of the private men instructed, at his own expence, in reading; an acquisition not only advantageous to them in a moral light, but essential to their attaining the rank of Serjeant, or other similar promotion.

Above

Above all things, let an Officer bear in mind, that one of the highest duties which he owes to his Maker, and one of the most substantial benefits which he can render to his Country, is to train up the men under his authority to settled principles and habits of religion. Religion is the only solid foundation of true courage; the only certain pledge for consistent excellence and persevering fidelity in the path of military or naval duty. Unreflecting rashness, insensibility to danger, emulation, pride, the dread of punishment, obstinacy, despair, passion, the desire of revenge; these and other motives, all more or less culpable or defective, may lead the combatant through many difficulties and perils, and supply for a time the place of better principles. But how little to be relied on is the resolution derived from these sources, compared with the genuine fortitude which he feels, who rests with humble and lively confidence on the superintending care of an all-wise, all-merciful, and all-powerful Protector, ever present with every individual in the crowded tumult of battle; a Being to whose favour he has habitually studied to recommend himself by faithful obe-

dience to his laws ; and to whose determination he cheerfully submits whatever is to befall him, whether it be safety or suffering, life or death ! Such are the principles with which, chiefly because they are the purest that can be instilled into the human heart ; and partly because they lead, far beyond all other considerations, to an upright and magnanimous discharge of professional duty ; an Officer ought to inspire, as far as it is possible, every individual (*k*) under his

(*k*) An Officer of very high rank in his Majesty's Naval service, to whose exertions in peace as well as in war this country is highly indebted, when I enquired of him what effect might be produced on the religion and morals of a ship's crew by the example and influence of the Captain, replied in pointed terms, that "a Captain has it in his power to set *any* example, and to produce *any* effect." It is obvious that the power of a Commander of a regiment in this particular is, in many, if not in all respects equal to that of the Captain of a man of war.

The same Gentleman having favoured me with written communications of his sentiments on some of the topics noticed in this chapter ; I am glad to lay before the reader the following instructive extracts.

—"By the Naval Instructions, divine service is to be performed morning and evening on board of every king's ship, according to the Liturgy of the Church of England, and a sermon preached on Sundays, unless
" bad

his command. To this end let him enjoin a regular attendance, in every instance where it is practicable, on the public offices of religion ; and ensure general respect to its Ministers by shewing

“ bad weather, or other *extraordinary* accidents, prevent
“ it.

“ The Commanders, by the same Instructions, are strictly
“ ly required to shew in themselves a good example of
“ honour and virtue to their Officers and men ; and next,
“ to be very vigilant in inspecting the behaviour of all such
“ as are under them, and to discountenance and suppress
“ all dissolute, immoral, and disorderly practices, and also
“ such as are contrary to the rules of discipline and obedi-
“ ence ; and to correct those who are guilty of the same,
“ according to the usage of the sea.

“ If any shall be heard to swear, curse, or blaspheme the
“ name of God, the Captain is strictly required to punish
“ them for every offence, by causing them to wear a
“ wooden collar, or some other shameful badge of distinc-
“ tion, for so long a time as he shall judge proper. If the
“ offending person be a Commission Officer, he shall for-
“ feit one shilling ; if an Inferior Officer, sixpence. He
“ who is guilty of drunkenness, if a Seaman, shall be put
“ in irons until he is sober ; but if an Officer, he shall for-
“ feit two days pay.

“ Lastly—Whereas the charge and command of the ship
“ and the Officers and men serving therein are *entirely* in-
“ trusted to the Captain ; and the welfare and good ma-
“ nagement of the whole do in an especial manner depend

shewing proper regard to them himself. Let him not fail to exert whatever influence his station may give him as to the appointment of a Chaplain to attend his men (and if he be Captain

“ on his oeconomy and prudence ; he is to understand,
 “ though the several rules contained in the Naval Instructions are sorted into different clauses for the better order
 “ and clearness, that nevertheless he is himself responsible
 “ for the *whole conduct and good government* of the ship, and
 “ for the execution of all regulations here set down which
 “ concern the several duties of the Officers and company of
 “ the ship ; who are to obey him in all things which he
 “ shall direct for his Majesty’s service.”

“ This transcript from the Naval Instructions shews
 “ that the Captain of a King’s ship has full authority to
 “ govern those under him ; and if he does his duty, no set
 “ of men in the community can be better placed for im-
 “ provement in religion and morals than seamen. The
 “ Instructions are practicable ; but the truth is, they are in
 “ a great measure become obsolete : and it will require
 “ attention and strict regulations on the part of the Ad-
 “ miralty Board to revive them. Proper Chaplains should
 “ be appointed to all ships where the number of men
 “ makes the allowance equal to a moderate living ; and
 “ depends upon the allowance that is not so. Such Cu-
 “ rates should be the highest class as they fall vacant,
 “ if deserving of so. And such Chaplainships as are con-
 “ nected with the Navy should be invariably given to
 “ deserving Sea Chaplains. The Ordinary of the Navy,
 “ though

tain of a man of war, that influence will commonly be decisive) in securing the nomination of a man of genuine and active piety. Let him invariably discountenance and chastise every

“ though composed of some thousands of men, in time
 “ of peace is miserably neglected. The Naval Instructions
 “ were formed when religion had more influence among
 “ the Great than is the case at present; and to carry the
 “ whole of them into execution would be difficult for an
 “ individual without the support of higher authority. But
 “ as they must be considered and amended soon, or the
 “ Navy discipline will be extinguished; this would be the
 “ time for reinforcing what regards divine service. ●

“ I will now tell you what my own practice was when a
 “ Captain; and I have the pleasure to know that the same
 “ is now done by a few of my acquaintance. I had been
 “ sixteen years belonging to the sea service before I heard
 “ either prayers or divine service performed on board of
 “ ship; and in all that time, I never knew any means used
 “ for giving a check to vice or immorality, further than as
 “ they interfered with the common duties of the ship. As
 “ soon as I was made a Captain, being in a very small
 “ vessel where no Chaplain was allowed, I began reading
 “ prayers myself to the seamen on a Sunday, and a sermon
 “ also. I continued this practice, by myself or my Chap-
 “ lain, during the whole time of my being afloat; and
 “ should not have hesitated doing it every day, if the prac-
 “ tice of having it done on Sundays had been general in the
 “ fleet. That it is in a degree practicable every day, I have

every kind of vice, particularly drunkenness, profane language, and other habits of wickedness by which the Military and Naval professions are proverbially disgraced. Let him follow

“no hesitation in saying; as I have very frequently performed the service myself with the greatest part of the ship’s company attending, when in chase of an enemy, and with a probability of engaging at the end of it. There is nothing wanting, but a revival of the Instructions; or indeed, a simple order or proclamation to enforce obedience; and the allowing *proper* Chaplains to execute it. No expence would attend this step, as the pay is provided for, and the men’s quota regularly stopped; but paid to the Chest at Chatham when no Clergyman is on board. In flag-ships, and ships of the first and second rate, the Chaplain should be in Priest’s orders, for the purpose of administering the sacrament occasionally in the fleet; a commemoration which I never remember to have heard observed at any time on board of ship.

“It has been the practice of late to appoint Chaplains to ships of the line, *when solicitation has been made by Captains or others*: but in this case, many of them have never gone to sea in the ships; and notwithstanding the Chaplain must produce a certificate from the Captain before he receives his pay, that he has performed divine service *as often as it has been required from him*, he seldom has found a difficulty in obtaining it.

“Character, which is essential to improvement, is seldom attended to in the appointment of Chaplains. If the
“Chaplains

follow the example of the most respectable persons in those professions, by exploding the no less wild than impious opinion, that the use of oaths is necessary to maintain authority
over

“ Chaplains were permitted and also enjoined to distribute
“ bibles, prayer-books, and other proper books, to the Sea-
“ men, to be paid for by themselves at pay-day ; I have lit-
“ tle doubt but that our Seamen would be among the
“ foremost of the classes of the community for piety and
“ good conduct. If divine service is performed daily on
“ board a king’s ship, it will require shortening ; and this
“ may easily be done by our Bishops, as in the Forms to be
“ used at Sea at the end of the Common Prayer Book.
“ The Chaplain might then go through this service at least
“ every morning ; and although the whole of the ship’s
“ company might not be able to attend, yet, if counte-
“ nanced by the Officers, he would never want a decent
“ congregation. Very much will depend upon the cha-
“ racter of the Captain ; but as it cannot be expected that
“ all will be good, it is the more necessary for the Admi-
“ ralty to enforce obedience to the Instructions, and Ar-
“ ticles of War, both of which enjoin what I have recom-
“ mended. When Captains see this done, and consider
“ themselves as responsible and punishable for neglect,
“ there will be no doubt of their attention.

“ I know very little of Regiments, but have heard of
“ many being very regular and exemplary in head quarters ;
“ of which I have no doubt when the Commanding Offi-
“ cer attends to them, and encourages them in religion.

over soldiers and seamen. Let him chase from his regiment or his ship games of chance, and all other incitements to profligacy, riot, and disorder. Let him distinguish by his notice those who lead christian lives; and allow to virtuous conduct every degree of reasonable weight in the granting of favours, and the distribution of preferment. And in some measure for the sake of all around him, but principally for his own, let his life be a practical

“ The Instructions given to a Sea Officer in Mr. Ramsay’s book were intended for a young man brought up under me. The compliment therefore paid to me, though much greater than I was entitled to, will serve to convince those who were acquainted with the services performed (for which I received an honourable mark of approbation from the Legislature of Barbadoes), that religion and naval duty are very compatible.”


Mr. Ramsay’s Essay on the Duty and Qualifications of a Sea Officer contains many excellent directions, and well deserves the perusal of persons of the naval profession. The fourth edition of that work, which he left at his death prepared for the press, will be found enriched with a copy of a complete set of rules and regulations for the government of a man of war, formed by the Officer whose sentiments I have just been transcribing; and carried by him into execution with essential benefit in two line of battle ships, one of which was of ninety guns, with a company of seven hundred and fifty men.

example

example of the duties which he inculcates ; and evince that in all his proceedings, whether they respect himself or others, he is actuated by a constant reference to a future and eternal state of existence.

The nature of the naval and military professions, the former of which adds to the common precariousness of life all the hazards resulting from boisterous elements, and both of them the risks attendant on war, seems to call those who belong to them to peculiar seriousness of mind and circumspection of conduct. Yet, strange as it may be, thoughtlessness frequently appears to increase in proportion to familiarity with danger. If this observation be well founded, it strongly inculcates on every Officer the importance of unremitting attention to the rites and precepts of religion in a line of life, in which the very circumstances that might have been judged singularly likely to lead the mind to habits of devotion, and a constant and lively and awful sense of duty, are found to fix it in carelessness, and to harden it in guilt.

3. The



3. The duty of an Officer towards enemies, and towards the subjects of neutral powers, is to be noticed in the next place.

The duties which an Officer owes to the enemies of his country may be comprised under the two general rules, of faithfully rendering to them whatever they are entitled in point of justice to demand from him ; and of treating them with every degree of forbearance and humanity compatible with the successful prosecution of a just war.

The first of these rules binds an Officer strictly to observe those general laws, which civilised Nations have adopted by express or tacit convention for the purpose of regulating hostilities. For as these laws were mutually recognised by the belligerent powers previously to the war, each party may claim from the other, as an absolute right, the benefit of every injunction and provision which they contain. It binds him likewise to conform to all articles existing in any treaty between his own country and the enemy, which were to continue uninterruptedly in force notwithstanding

standing future ruptures between the contracting States. These antecedent engagements cannot be annulled without the act of the enemy ; who may cancel them either by an express renunciation ; or by failing himself to comply with them, or with some other agreement on which their validity was to depend. But an Officer who should infringe any one of them until it is undeniably cancelled in some one of these methods by the other party, would be guilty of an act of palpable dishonesty ; and would of course be altogether inexcusable, whatever advantages he might hope to procure, or might actually obtain, for his country by the attempt. Our rule in the next place inculcates on every Officer the punctual performance of all engagements which have been made during the course of the war with the adverse Nation, or with individuals belonging to it, either by the Government of his own country, or by its authority delegated to himself or to other persons employed in its service. Under this description is comprehended the scrupulous observance of capitulations, of truces, of safe conducts, of parleys, of cartels, of paroles. He who abets another
in

7

in the violation of these or similar promises and contracts, is not less criminal than if he had broken them himself. He who breaks them by insidious subterfuges and evasions; he who employs the liberty and opportunities which they afford him for purposes which he knows to be repugnant to the real and acknowledged meaning of the other party; commonly incurs deeper, because more deliberate, guilt, than he would have brought upon himself even by openly refusing to adhere to them.

Sincerity is a duty faithfully to be observed towards an enemy. It is no breach of this precept to have recourse to such feints and stratagems in the conduct of warlike operations, as are not repugnant to the received laws of war; for these cannot be styled deceits in the proper sense of that term, being invariably expected (*1*), and admitted to be fair dealing
by

(*1*) Some authors have defended the lawfulness of stratagems on the absurd plea, that a man having a right to kill his enemy, has therefore *à fortiori* a right to deceive him. See Vattel's Law of Nations, Chapter on Stratagems, vol. ii. p. 66; a chapter which contains many just observations, blended with a strange mixture of weak, confused,

by the opposite party. The combatant who seems to aim a blow at the head of his adversary, with a view to lead him to leave his breast exposed, at which from the first he intended to strike, violates no rule of morality : for the other was well aware, that the gestures of the assailant were not meant to convey any promise as to the part against which his attack should be directed. For similar reasons the Commander is blameless, who apparently menaces a particular district with an invasion, that he may cover his real designs on another quarter ; or assembles numerous standards on a hill, and pitches a camp of unnecessary magnitude ;
that

fused, and inconsistent reasoning. Deceit is on no pretence or occasion lawful. But allowed stratagems are not deceits, according to the real import of the word. If a person, on being requested to do a particular thing, answers, " that he will do it," or even nods, and afterwards does it not, it is deceit. And why ? For this reason alone, because the words and the sign were such as, according to common acceptation, implied assent. But had it been universally understood, that in certain cases they should not necessarily imply that meaning, he might have used them in those circumstances without being pledged to it, and without being chargeable with deceit if
he

that he may excite exaggerated ideas of his force. But were an Officer, after agreeing to surrender a fortress, to cut off by an ambuscade the troops sent to take possession of it, or blow them up by springing a mine; or were he to call for quarter in battle, and then to shoot his antagonist whom he had thus thrown off his guard; his conduct, being utterly repugnant to all the established laws and usages of war, would be the height of treachery and baseness.

Our second general rule directs an Officer to conduct himself towards the enemy with every degree of forbearance and humanity

he should depart from it. Now it is universally known and admitted to be one of the laws of war, that an Officer is at liberty, within certain limits, to use signs of various sorts without being pledged to their common meaning; and to use them thus for the purpose of leading the enemy to erroneous conclusions as to his force and intentions. He therefore who uses them in this manner is guiltless of deceit.

The Achæans, according to Polybius, b. xiii. p. 671, &c. appear to have rejected the use of stratagems, not merely as cowardly, but as immoral; and the historian himself seems inclined to that opinion.

compatible

compatible with the successful prosecution of the war.

When hostilities are actually commenced, they must necessarily be carried on with the spirit and exertions adapted to bring them to their proper termination—the attainment of redress for injuries received, and of reasonable security against similar attacks for the future. But every hostile proceeding of an army, or of an individual, which is not essentially conducive to this end, whether it be the slaughter of troops who might as easily have been taken prisoners; needless rigour towards vanquished or captive adversaries; the wanton destruction of public buildings, and of the monuments of science and art; or injury offered to the persons, and havock committed on the property, of unarmed citizens and peasants, is totally without excuse. A conscientious Officer, while he courageously discharges his duty to his country in the camp and the field, will rejoice in every opportunity which presents itself of mitigating the horrors, and alleviating the miseries of war. He will spare, whenever it is practicable, the blood of his enemies. He will

will remember that those who fall in the field of battle, to whatever nation or party they belong, are men like himself; and that the life of every single unit in the long sum of slaughtered thousands was of the utmost possible consequence at least to one person, if not to more. He will contain his troops within the strict bounds of discipline; he will inculcate on them constant regard to moderation and humanity; and will chastise with exemplary rigour every act of barbarity and unauthorised rapine, whenever and by whomsoever it may be perpetrated. He will never forget the common ties of human nature, by which he is inseparably united to his enemy; an enemy whom he is shortly to meet before the throne of their common Judge. Let the conquered foe, whether of high rank, or in the humblest station, be treated as a brother. If he has fallen, let his remains be protected from insult. If wounded, or afflicted with sickness, let him receive that succour which the victor, were their situations reversed, would wish to experience. Let the prisoner be exchanged without unnecessary delay; or be permitted, as speedily as circumstances will allow, to return on his parole

role to his country and his friends. Let not baits be thrown out to allure him into crimes ; to tempt him to desert and betray his country ; to make improper discoveries ; or to enter into any engagements, or accede to any proposals, which a man of integrity ought to reject. If he must unavoidably be detained for a time in confinement, let not severity or neglect add to the distresses of a prison. Let the utmost tenderness and delicacy be shewn to those of the weaker sex, who are overtaken by the calamities of war. And above all things, when towns and forts are captured by storm, let no exertions be spared to protect persons of every description, particularly the old and the helpless, from the outrages of an unbridled soldiery, flushed with victory and panting for spoil and devastation.

Among the many blessings which the introduction of Christianity has conferred on mankind, the change which it has wrought in the mode of conducting hostilities, and in the treatment of enemies and captives, is not the least considerable. This change is ascribed solely to the refinement of modern manners,

by such as are not disposed to attribute much credit of any kind to Revelation. But they forget that this very refinement is principally due to the influence of the Gospel on those who believe it, and to the effect of their example on those who do not.

The duty of an Officer towards the subjects of neutral powers consists in respecting the rights and immunities of neutrality, whether established by the general laws and usages of nations, or by particular (*m*) treaties. He may
not

(*m*) There are some things not provided for by treaties, which custom and the practice of war seem to authorize. Treaties generally forbid neutral powers to supply an enemy with naval stores, or any kind of warlike weapon; and commonly specify the particulars. But it sometimes happens that many articles not within the letter of the treaty may be highly useful to an enemy, when in great want of more material stores; and this country, in such cases, through the superiority of her naval power, has seldom failed to bring ships having them on board into port, and to make a compulsory purchase of the articles in question. The public, through the medium of the Navy Board, has been the purchaser; and the price given has been sufficiently good. If we had never proceeded further, neutral powers would probably have found no fault. But in the American war such ships, through useless forms and
bad

not compel nor delude individuals to violate their neutrality towards his enemies by abetting, directly or indirectly, his hostile operations. He may not infringe neutral property by sea or by land, nor detain or purchase it by compulsion; except in cases wherein the legality of such measures was previously recognised by the neutral state. He may not attack his adversaries, nor seize their property, in disregard of the privileges of neutral lands, coasts, and harbours,

bad management, were suffered to lie in our harbours till both vessels and cargoes were perishing. The consequence was, that on account of a very few articles the ship's voyage was stopped; and a host of enemies raised up against us, which at last ended in an armed neutrality. We were in the end obliged not only to purchase every article of the cargoes; but to pay heavy demurrage, and also compensation for the damage which the ships received, to an enormous amount. Some of the ships remained twenty-one months in our ports before they were brought to trial; although a short and obvious plan (which would at once have ensured the seizure of the objectionable articles on the arrival of the vessels in port, and the immediate liberation of the ships without the charges and delay of trials in the Court of Admiralty, and would thus have prevented the vast expences and other disagree-

harbours, whatever advantage we might hope thus to obtain for (n) himself or for his country.

4. It remains to subjoin a few brief remarks relating to the conduct of an Officer in private life.

They who escape the vices peculiar to their

able consequences which resulted to this country from method actually followed) was proposed from the proper quarter.

(n) There are various cases of captures, some respecting neutral rights and immunities, others not, in which a Naval Officer will naturally be under a temptation of seeing the circumstances too strongly in his own favour. It may be doubtful whether the vessel taken be neutral property or not; whether it was not seized within so small a distance from a neutral coast, that the captor is bound to relinquish it; whether it was not taken after the commencement of a truce; whether other vessels were not actually in sight at the time of the capture, so as to be entitled to a share in the prize; whether, if it be a retaken ship, it was not in the enemy's possession merely for so short a time, that it should be restored to the original owner. In these and all similar situations let an Officer carefully guard against the bias to which he is subject; and shew himself aware that the rights of others, whoever they may be, are no less sacred than his own.

profession,

profession, cannot avoid the habits which it naturally produces. It may be observed, with regard to the professions of which we are now treating (and a similar reflection might be applied to others), that some of the habits which they occasion, and even require, become vices when they are transferred from the camp and the quarter-deck to the walks of social and domestic life. And thither they will certainly, though perhaps imperceptibly, be transferred, unless active care be employed to confine them to their proper sphere. He who has been long accustomed to the exercise of undisputed command, is in danger of expecting from his family and dependents a mechanical submission to his inclinations, and an unbounded deference to his opinions; or at least of tarnishing the character of the Master, the Parent, and the Husband, by the authoritative demeanour and peremptory tone of the Officer. He who has been familiarised to the frequent change of place and company experienced by persons in the Navy and Army, is liable to harass those who are connected with him, by indulging a roving and unsettled disposition; to depress them by discontent at what he terms the dul-

ness of retirement ; or to ruin them by expensive efforts to enliven it. And he who has been used to pay that attention to personal air and appearance which is thought requisite on the parade, has but a step to take to the affectation and fopperies of dress ; and it is well if he has not taken it already.

When an Officer is not called into employment, a portion of the leisure which he enjoys should be allotted to the study of his profession. Otherwise, when he returns into active service, his associates will probably perceive, if he should not make the discovery himself, that he has rapidly declined in knowledge, alacrity, and merit. This too is the time for storing his mind with other attainments in science, in history, in useful and elegant literature ; which cannot be fully acquired, though they neither need nor ought to be neglected, during the shorter intermissions of professional avocations. In the intervals of garrison duty, and the quiet of a voyage, a package of well-chosen books, not bulky enough to occasion inconvenience, will impart much substantial information ; and prevent the languor

languor of many a tedious hour. As young men are frequently placed in the Navy and Army before their education is properly completed, every subsequent opportunity of improving the mind ought to be turned to the best advantage. A Military Officer in quarters in time of peace, has many ample opportunities ; and the due application of them will preserve him from the idle, finical, and dissipated habits, which otherwise he will scarcely fail to contract. He who belongs to the Naval profession, when not engaged in real service, is generally detached altogether from professional business ; and therefore feels himself at liberty to devote his thoughts and time to some other liberal employment, until his country calls again for his exertions in her defence. But the Military Officer is commonly exposed during peace to the disadvantage of being so far occupied by the duties, or at least by the forms, of his profession, as to be precluded from undertaking any other settled pursuit ; while at the same time the greater part of his hours remains vacant, and open to the intrusion of indolence and vice.

“ In free States,” Sir William Blackstone remarks (o), “ no man should take up arms but with a view to defend his country, and its laws. He puts not off the citizen when he enters the camp ; but it is because he is a citizen, and would wish to continue so, that he makes himself for a while a soldier.” This just reflection points to that depravation of public principle, which too often takes place among the Military of despotic monarchies. Trained to habits of implicit obedience, and of entire dependence on the will and favour of the Prince ; insulated in camps and fortresses ; and detached from the offices of civil life ; they learn to consider themselves as possessing an interest distinct from that of the other members of the community, and thence are more easily led to co-operate in oppressing them (p). It must be confessed that this danger will subsist, in a greater or a less degree, in all countries where standing armies are

(o) Commentaries, vol. i. p. 407, 5th edition.

(p) The nature and circumstances of Naval service are such, that Officers in that line are little exposed to this temptation, unless it be in what regards the impress service.

maintained ;

maintained ; as some of the circumstances from which it originates are essential to discipline and subordination. And on this account, as well as for many other reasons, the numbers of the standing army ought ever to be restrained within the narrowest bounds consistent with the public security. But the natural spirit of liberty is, it surely may be hoped, too strong, and a rational sense of duty too prevalent, among British Officers, to leave reasonable ground for apprehension that their arms will ever be employed otherwise than for the support of the rights of their countrymen. The British Constitution has wisely engaged the Military Officers in its defence, and shewn a just confidence in their patriotism, by admitting them to all the civil honours and occupations consistent with their peculiar functions, and even to seats in both Houses of Parliament.

If an Officer is also a member of the Legislature, never let him prostitute his vote in a single instance for the purpose of advancing himself, or of being employed in his profession. And let every Officer, whether in Par-

330 NAVAL AND MILITARY OFFICERS.

liament or not, equally abhor acting a mean and dishonest part at the beck of any person whatever, whether in a public or in a private station, with the view of obtaining preferment.

CHAP. IX.

ON THE DUTIES OF THE LEGAL PROFESSION.

“A BARRISTER, according to the present mode of exercising his profession, lives by the practice of systematic and flagrant injustice. It is his almost daily business to vindicate proceedings which his understanding and heart must condemn, to defend culprits whom he knows to be guilty. How is the man, who strives by legal subtleties to establish for his client the validity of an iniquitous bargain, less criminal than if he had robbed the sufferer on the highway? How is the man more innocent in the eye of conscience, who, by availing himself of verbal formalities in a will, gains the estate to his employers in contradiction to the known intentions of the testator, than he would have been, had he forged a deed of gift in their favour? Why is the Advocate, who by the
“aid

“ aid of technical quibbles and flaws rescues
“ from public justice the wretch who has
“ perpetrated a murder, less to be abhorred
“ than the murderer himself? Let the practi-
“ tioner at the Bar renounce at once all concern
“ with causes, the merit of which he has rea-
“ son to distrust ; or, if he is conscious that
“ he should thus reduce his emoluments below
“ the most moderate recompense which his
“ industry and exertions demand, let him re-
“ nounce a profession incompatible with the
“ fundamental dictates of morality.”

Such we may conceive to be in substance the objections, which, had they been decorated by the admired imitator of Lord Bolingbroke with the brilliancy of his eloquence, might have been formed perhaps into a powerful argument against one of the most distinguished institutions of civil society. The difficulty which they present has disquieted with scruples the minds of wise and good men. It becomes us therefore to clear the profession itself from the imputation of inherent criminality, before we attempt to illustrate the duties of those who follow it.

We

We may reply then, in the first place, that civil society, for which men are evidently designed, cannot be upheld unless effectual means are provided for maintaining the rights of its members ; that injustice cannot be repressed in any tolerable degree by unsettled and arbitrary proceedings adopted in particular cases, nor by any other method than the establishment of general laws ; and that these laws would become nugatory, were there not an order of men appointed to claim and apply their assistance in behalf of the injured. We may proceed in the next place to observe, that every man ought to be presumed innocent until he is proved guilty ; that it becomes the Advocate to leave to Judges and Juries the determination of doubtful points, and to consider almost every point as doubtful, until the trial shall afford him an opportunity of learning and appreciating the various facts and arguments on which the claim of the opposite party depends ; and that although occasional evils may result from the universal and invariable application of established laws, he may conscientiously demand, under any circumstances whatever, a decision conformable to them, not merely because

because the universal and invariable application of them is essential to the due distribution of justice, but because the nation has avowedly consented and resolved to acquiesce in their decision of all questions to which they are meant to be applied. But does not this answer, it may be said, give the Advocate a liberty which Christianity denies to him? Does it not teach him, that immoral means may be used to accomplish a beneficial end; that individual acts of fraud and injustice may be vindicated and abetted, for the sake of upholding a system, by which fraud and injustice are on the whole restrained? By no means: it gives no countenance to a doctrine so clearly condemned in the Gospel. Let it be remembered, that the standard to which the Advocate refers the cause of his client is not the law of Reason, or the law of God, but the law of the Land; and that he appeals no further to the two former than as they are incorporated into the latter; that his peculiar and proper object is not to prove the side of the question which he maintains morally right, but legally right; that the law offers its protection only on certain preliminary conditions; that it refuses to
take

take cognizance of injuries, or to enforce redress, unless the one be proved in the specific manner, and the other claimed in the precise form, which it prescribes; and consequently that, whatever be the pleader's opinion of his cause, he is guilty of no breach of truth and justice in defeating the pretensions of the persons whom he opposes, by evincing that they have not made good the terms on which alone they could be legally entitled, on which alone they could suppose themselves entitled, to success.

"It follows then," the objector will reply, "that a Barrister may conscientiously undertake the management of any suit whatever; convinced as he may be that it is both a cruel and an iniquitous prosecution, originating in rapacity, malice, or revenge." This conclusion is altogether groundless. Cases may frequently occur in which an Advocate would be highly blamable were he to undertake the defence of the cause proposed to him, though by defending it he should violate no precept of justice. If in consequence of facts communicated to himself, or through circumstances established by public notoriety, a cause should

present an aspect so dark as to leave him no reasonable doubt of its being founded in iniquity or baseness, or to justify extremely strong suspicions of its evil nature and tendency; he is bound in the sight of God to refuse all connection with the business; and, if he finds himself inadvertently entangled in it, to relinquish it without delay (a).

The foregoing reasoning may be illustrated by an example. The father of a family dies, having bequeathed his estate, in consequence of disapproving his son's way of life, to a nephew. The son claims the property in a court of law; pleading that the testator was disordered in his understanding, and that the will was not attested by competent witnesses. A Barrister well acquainted with all the circumstances of the case, is desired by the nephew to undertake his defence. Suppose the private sentiments of the Counsel to be, that

(a) Were we to suppose a cause to depend for success on a human law manifestly contrary to the law of God, a Barrister would be obliged in conscience to refuse all concern with it. Thus, in former times, no Lawyer ought to have taken any share in prosecutions founded on acts of Parliament for burning of heretics.

the

the father had cherished unreasonable prejudices against his son ; and therefore was guilty of a moral crime in making the nephew his heir. Yet he may defend with a safe conscience the title of the latter. For it is no part of his office to vindicate the motives of the parent. They are not the points against which the attack of the son is directed ; they are not the grounds on which the law will form its decision. Whatever then may be the opinion of the Advocate respecting them, he may fairly endeavour to substantiate matters of fact perfectly distinct from them, the soundness of the testator's intellect, and the legal admissibility of the persons who attested the will. But if he were aware that the disgust which the father had conceived against his child arose from the secret machinations of the nephew ; if he were aware that parental affection had been extinguished by insidious artifices, and the credulity of old age besieged by fabricated calumnies ; he ought to decline the retainer with inward abhorrence, and not to disgrace himself for a moment by appearing to countenance guilt so palpable and enormous.

though persuaded that it might appeal with success to the forms of legal justice.

If any obscurity still remains on the subject, it may probably be dispelled by considering that the reasoning, here applied to the profession of the Law, is grounded on general principles applicable to every profession. For on the one hand it is universally true, that no man is guilty of an actual infringement of justice, nor necessarily criminal, in selling at a fair price the commodity, whatever it may be, in which he deals; though he should disapprove the manner in which the purchaser means to employ it. And on the other, it is undeniable that cases may exist, in which, if he should furnish the article to his customer, he would be highly culpable. Thus a distributor of stamps would not necessarily act a guilty part in selling one to a neighbour, who should manifestly intend to use it in borrowing money to supply his extravagance, and on terms which he could not properly afford; nor a gunsmith in disposing of a brace of pistols to a person whom he might think not unlikely

likely to leave them charged on his table, to the hazard of thoughtless visitors. But did the former conceive that the stamps were to be employed in a forgery; or the latter that the pistols were intended to extort purses on the highway; a compliance with the request of the customer would be indefensible and flagitious.

The way being smoothed by the removal of these obstacles, we may proceed to distribute the subject of this chapter into four principal heads. Under the first will be considered the general qualifications at which a Barrister is to direct his aim; and the general prejudices and temptations against which he is to guard himself. The second will relate to his conduct in the management of a cause previous to and during the trial. The third, to the peculiar situation of those Lawyers, who are Members of the House of Commons. The fourth, to the duties of Judges.

I. The study and the practice of the law being in a high degree laborious; the former to those who hope to attain considerable eminence, the latter to those who have attained

330 NAVAL AND MILITARY OFFICERS.

liament or not, equally abhor acting a mean and dishonest part at the beck of any person whatever, whether in a public or in a private station, with the view of obtaining preferment.

CHAP. IX.

ON THE DUTIES OF THE LEGAL PROFESSION.

“A BARRISTER, according to the present mode of exercising his profession, lives by the practice of systematic and flagrant injustice. It is his almost daily business to vindicate proceedings which his understanding and heart must condemn, to defend culprits whom he knows to be guilty. How is the man, who strives by legal subtleties to establish for his client the validity of an iniquitous bargain, less criminal than if he had robbed the sufferer on the highway? How is the man more innocent in the eye of conscience, who, by availing himself of verbal informalities in a will, gains the estate to his employers in contradiction to the known intentions of the testator, than he would have been, had he forged a deed of gift in their favour? Why is the Advocate, who by the
“aid

which prevails in the courts of justice; a style in some degree perhaps imposed on men of the legal profession by the abstruse and unalluring nature of the discussions, in which they are commonly engaged; but in a great measure resulting from want of precaution against growing habits, and from a neglect of the more elegant branches of literature. Were the pleader accustomed to warm his imagination by the study of those efforts of eloquence which shook the Roman Senate, and roused the Citizens of Athens; were he to expand his genius and refine his taste by intimacy with the first poets of antient and modern ages, and with the principal works of polite and ornamental learning, which have appeared during the last and the present century in this country and in some other parts of Europe; he would transfuse their spirit into his own exertions; he would pour forth his thoughts in elevated and flowing language; and, even when cramped by rugged and impracticable subjects, would adorn his forensic erudition with illustrative imagery, copious, though select; and gleams of fancy, vivid, though chastised.

In addition to the Courts of Justice there is yet another and a nobler school of oratory open to the public, in which the Student may be instructed and gratified by the grandest displays of modern eloquence. The facility of access which the Houses of Parliament offer is a circumstance peculiarly advantageous to the youthful pleader, not only from the light which is thrown in the course of debate on controverted questions of law; not only from the improvement to be derived from witnessing the eager contests, the vigorous attacks, the wary methods of defence, exhibited by men of the most conspicuous talents, rivals alike in abilities and interests; but especially from this consideration, that the speakers are in general exempted by the nature of their functions from those defects to which pleaders are peculiarly exposed. The House of Commons in particular affords the most striking examples of that bold, exuberant, and rolling tide of elocution, so rarely to be found at the bar. It must however be remembered, that the situation of parliamentary orators renders them liable to faults of their own, and to different faults in the different Houses. Let not blind admiration

admiration lead the young Barrister to mistake defects for excellence; nor to forget that what is an excellence in Parliament cannot always be transferred with advantage to a Court of Justice.

It remains under this head to speak of certain dispositions and habits, which it behoves every man engaged in the profession of the law to cultivate with the utmost solicitude; and of some peculiar temptations, against the effects of which he ought to guard himself with unremitting vigilance.

It is scarcely necessary to observe, that uncorrupt integrity is a virtue so naturally allied to the character of a man, whose avowed office is to procure the establishment of rights and the redress of injuries, that the possession of it affords little claim to praise; the want of it ensures indelible infamy. In the common course of proceedings, allurements to dishonesty and breach of trust will rarely exhibit themselves in very attractive colours. The Barrister on whom religion has little hold, will in general be restrained by the principle of honour.

He

He who looks only to emolument will tremble lest detection, an event ever to be dreaded from the scrutinizing accuracy of legal tribunals, and the keen-eyed suspicion of his opponents, should blast the golden harvests which he beholds in idea ripening for distant years. And he whose conscience is alive to the dictates of Christianity, will recoil at the bare mention of a crime, which he knows would not be unseen by his Almighty Judge; and must ere long be blazoned before men and angels, though obscured at present by every possible precaution, and committed in the deepest recesses of solitude.

Benevolence in its most enlarged meaning ought to possess the breast of the Barrister. It will incline him not only to be affable and kind and attentive to those who entrust him with the management of their concerns; but rather to advise the adjustment of disputes by amicable arbitration, than by referring them to the decision of the laws. It will teach him more particularly to discountenance the prosecution of suits which are on the point of taking place between near relations; or which

o

appear

appear to originate in motives of pique, malice, or revenge. It will lead him to consider himself as the patron of the poor and friendless, the defender of the fatherless and the widow. It will co-operate with the suggestions of integrity in deterring him from buoying up his client with unsubstantial hopes of success; and will prompt him to be explicit as to the probable charge as well as event of the cause; to be moderate in his own demands of recompense; and to adopt, as far as may properly be done, such methods of conducting the business as afford a prospect of lessening the expence and allaying the animosity of both the contending parties. It will also contribute to secure him from the danger of becoming absorbed by interested and worldly views; a disposition not unlikely to be acquired by being perpetually conversant in questions of property; and from gradually contracting a selfish narrowness of spirit, and a proneness to insist in private life on his own rights with unrelenting rigour, in opposition to the suggestions of kindness and forbearance. It will preserve his natural sensibility from being blunted, and the warmth of his
affections

affections from being chilled, by habits of familiarity and social intercourse with men for whom he does not entertain a real friendship. And finally, it will restrain him from indulging a censorious and distrustful opinion of mankind in general; an opinion which commonly finds easy access into the mind of him, who lives in the daily contemplation of scenes of fraud, of rapacity, and of violence; and, if it be not radically extirpated, extinguishes every generous sentiment, and petrifies the heart.

As industry in the acquisition and in the application of professional knowledge is one of his most prominent duties; he will be on his guard against indolence, fickleness, irresolution, immoderate love of amusements, and against every ensnaring and dissipated habit, the natural effect of an overgrown, wealthy, and luxurious capital. He will fortify himself against the contagion of profligate examples. He will beware of being betrayed into a neglect of the public and private duties of religion; or into the scepticism and infidelity too prevalent, if public report is to be credited, among the students and practitioners

of the law; and will qualify himself, "and be
 " ready, to give to every one that asketh, a
 " reason of the hope (d) which is in him."

He will strive to escape that *esprit de corps* which so often leads professional men into unjustifiable and disgraceful practices; and to wean himself from an improper bias in favour of the particular court to which he is attached, and a groundless dislike to the forms and proceedings of other co-ordinate tribunals. He will evince a proper consciousness of the danger to which the man whose vocation is controversy stands peculiarly exposed, of contracting a daring firmness of forehead; peevish, petulant, and overbearing manners; a cavilling and disputatious turn of mind; and a waspish and irritable temper. He will not look either on men or on books with an eye disposed rather to discover and to dwell on blemishes, than to contemplate with pleasure and advantage what is deserving of approbation and capable of being instructive. He will not consider every topic which presents itself in the intercourse of familiar conversation, and

(d) 1 Pet. iii. 15.

the circle of domestic society, as an object of contention. He will not look upon every man who ventures to give an opinion, as throwing down the gauntlet of defiance. If he judges it right to dissent from what he hears, and to state the reasons in which his difference of sentiment originates; he will not resort to those captious objections, nor manifest those rhetorical arts, and that reluctance to concession, which, if pardonable in the professed advocate of a party in a suit, ill become the candid enquirer after truth in the unreservedness of private discussion. He will not give vent to cutting and ungenerous sarcasms against those who differ from him; nor indulge himself, when they are no longer able to resist his arguments, in the ostentatious arrogance of victory.

The Lawyer who is frequently engaged in resisting what he strongly suspects to be just, of maintaining what he deems to be in strictness untenable, of advancing inconclusive reasoning, and seeking after flaws in the sound replies of his antagonists, can be preserved by nothing short of serious and invariable solicitude from the risk of having the distinc-

tion between moral right and wrong almost erased from his mind; or of suffering their discriminating characteristics to be so far weakened, as to be incapable of attracting his attention except in cases of flagrant enormity.

Through the operation of the same causes, and the necessity which his employment imposes on him of frequent and indiscriminate association with men of every variety of character, he is liable to acquire a sort of indifference as to the virtuous or vicious habits of his companions; and in the choice of his friends to attend merely to professional abilities and advantageous connections, disregarding the recommendation of pure morals and christian piety.

He is not less obnoxious to the temptation of gradually permitting himself to conclude, that whatever is right in law is also morally and politically right. Accustomed to behold the decisions of courts of justice appealed to in every dispute, received with reverence, and obeyed with implicit submission; accustomed to behold those decisions founded on legal precedents; he learns at length, unless he
stands

stands firmly on his guard against the bias of habit, to contend that no rights exist, except such as those precedents recognize; he considers the opinion, that individuals may retain natural rights concerning the existence or proper exercise of which precedents may be silent, as leading to sedition and anarchy; and treats perhaps the existence of any determinate natural rights whatever as the dream of visionary speculation. He becomes uniformly averse to innovation, and to reform; because they imply a change. He vindicates practices, however immoral in their immediate or remote effects, however oppressive and iniquitous to foreign nations, if they have been sanctioned by long established usage; especially if property of any kind should seem likely to be rendered less valuable by the discontinuance of them. He indiscriminately opposes measures calculated to extend popular freedom beyond its existing boundaries. He turns to his precedents. By them he finds the present state of things supported, and he is satisfied. He deems it sacrilegious to change what courts of justice have adopted as the basis of their decrees;

and presumptions to question as unwise what ancient sages of the law have dignified with their approbation. If precedents are discovered of an opposite kind, he admits them with reluctance. He contends at once that they are derived from turbulent and unenlightened times; that they are counteracted by more numerous or more respectable authorities; or that they have become obsolete by disuse; or have been annulled by implication in subsequent statutes. If unable to maintain these positions, he takes refuge in the letter, regardless of the spirit of the precedent; and, by requiring proofs of an exact similarity between the original case to which it refers, and that to which it is intended to be applied, exempts himself from the obligation of obeying it further than that coincidence is established; and not unfrequently from the obligation of obeying it at all (c).

The

(c) The subjoined extracts from Sir William Blackstone's Commentaries shew that professional prejudices were able occasionally to influence his comprehensive and cultivated mind.

"In a full assembly of the Lords and Commons met in
 "a convention upon the supposition of this vacancy (of
 the

The bare recital of these prejudices, and of the conduct to which they lead, may admonish the Barrister to guard against the one and the other; and to imitate the numerous examples of individuals of his profession, who

“the throne), both Houses came to this resolution: “that King James the Second, having endeavoured to “subvert the Constitution of the kingdom by breaking “the original contract between King and People; and “by the advice of Jesuits and other wicked persons having “violated the fundamental laws, and having withdrawn “himself out of the kingdom, has abdicated the government, and that the throne is thereby vacant.” Vol. i. p. 211.

“*And so far as the precedent leads, and no further, we* “may now be allowed to lay down the *law* of redress “against public oppression. If therefore any future Prince “should endeavour to subvert the Constitution by breaking the original contract between King and People, “should violate the fundamental laws, and should withdraw himself out of the kingdom; we are now authorized to declare that this *conjunction* of circumstances “would amount to an abdication, and the throne would “be thereby vacant. But it is not for us to say that any “one, or two of these *ingredients* would amount to such a “situation; for there our precedent would fail us.” Vol. i. p. 245.

So meagre an interpretation of the precedent, resting literally on the terms in which it is couched, and neglect-

who have proved themselves endowed with minds sufficiently enlarged to withstand the force of those temptations, to which by their employment and habits they were peculiarly exposed.

Such

ing the great principles of Civil Government on which it was founded, would leave Englishmen little reason to appeal to the Revolution in support of their rights in the case of future public oppression. For it is highly probable, that if acts of despotism should ever hereafter take place, they will not display a conjunction of all the ingredients which the learned Judge pronounces necessary to be mingled together before it will be lawful to recur to the precedent of 1688. And it is further to be observed, that he has omitted a conspicuous part of the precedent, although every part of it, according to his own rule, is indispensably to be received with equal reverence and observed with equal strictness. The resolution of the Convention Parliament expressly states, that the fundamental laws were then violated by the King, through "*the advice of Jesuits, and other wicked persons.*" If therefore some future Monarch should endeavour to subvert the Constitution by breaking the original contract (that is to say, the Coronation oath; Blackstone, vol. i. p. 234); should violate the fundamental laws, and withdraw himself out of the kingdom; yet, unless it should further be proved that he had violated those laws "*by the advice of Jesuits;*" and not only by the advice of Jesuits, but likewise by the advice of "*other wicked persons,*" the precedent would

Such however is the nature of the human mind, that moral causes, which in some respects exert on it a pernicious influence; are productive under certain circumstances of beneficial effects, tending to counterbalance the evils flowing from the same source. This general principle may receive illustration from the present subject. The same reverence for ancient institutions, the same abhorrence and jealousy of innovation, the same punctilious attachment to prescription and precedent; which may incline members of the legal pro-

would be, on Sir William Blackstone's principles, altogether inapplicable and useless.

It should be added however, in justice to Sir William Blackstone, that he repeatedly adopts a very different tone. Thus he affirms, vol. i. p. 43, that the Revolution, though "it might in some respects go *beyond the letter* of our ancient laws, was agreeable to the spirit of our Constitution, and the rights of human nature." And speaking, p. 241, of cases of oppression not exactly similar to that which produced the Revolution, he refers "future generations, whenever necessity and the safety of the whole shall require it, to the exertion of those inherent, though latent, powers of society, which no climate, no time, no constitution, no contract, can ever destroy or diminish."

feffion

fession to behold with extreme suspicion every unusual though warrantable exercise, and to oppose with perseverance every material though fit extension, of popular privileges, has often rendered them alive to encroachments on the legal rights of their fellow subjects, and prompt to defend their acknowledged franchises.

II. We are in the next place to consider the duties of a Barrister in conducting a cause previous to and during the trial.

1. When requested to engage in the management of a suit, he will in the first place take such a view of its leading features, as may enable him to decide whether it falls under that description of causes, with which only it becomes a conscientious Advocate to be concerned. He will beware of involving himself, through haste and inadvertency, in causes of so objectionable or ambiguous a nature as to make it not improbable that he may afterwards find himself reduced to the trying alternative of abandoning them, to the injury of his Client, or persevering in them, to the wounding

wounding of his own conscience. He will not rashly expose himself to the imputation of being rendered blind to enormities by the desire of gain; nor hazard his character for patience and assiduity, by appearing to have entangled himself in a transaction without previous enquiry into the circumstances attending it. He will recollect too, that particular incidents may make it unfit for him to be concerned in a cause, in the management of which another person might stand forward without impropriety. He will therefore keep himself clear from engaging in a legal process, when his interference is likely to be ascribed to personal pique and animosity. Let him not lay himself open to the suspicion of employing the poniard of revenge, while he appeals to the sword of justice. As the bias of interest will commonly lie on the side of undertaking the business proposed, let him suspect himself of being actuated by it imperceptibly, and form his determination with proportionate coolness and solicitude; and be no less careful to repress absurd and unjustifiable suits among the opulent, than among the poor. But when he
has

has fully satisfied all the scruples which integrity and prudence may suggest, let him not indulge such as are unnecessary. Let him consider the time which the person applying to him has lost by that application, and the consequent inconvenience which he may have sustained; the unfavourable light under which his cause would be presented to another Counsel, if it should have been rejected by a man of judgement and reputation; and the stigma under which it would for the same reason be introduced into a court of justice. Nor should he forget, that if Barristers of eminent characters and talents were frequently to decline causes on insufficient grounds; the result would be, that the larger proportion of the persons who are obliged to have recourse to legal tribunals, foreseeing the prejudice which their suits would receive if their application should be rejected, would transfer their concerns into the hands of needy and unprincipled chicaners, who would be careful not to disgust such as should consult them by a superabundance of fastidious delicacy. In the present complicated state of civil society, the prevailing

vailing influence of men of this description would be of inexpressible detriment to the public peace and welfare.

Whatever may be the conduct of the Barrister as to undertaking or declining the cause; it is his duty to form his decision with dispatch; and to impart it to the person interested as soon as it is formed. To the latter every moment is precious. If he cannot obtain assistance from the quarter where he first solicits it, he has at least a claim not to be precluded by unreasonable delays from seeking it elsewhere. And cases may easily be supposed, in which such delays may prevent him from applying to another Counsel early enough to be prepared to meet his adversary, who may be aware of his embarrassments and contrive to precipitate the trial. Thus, by the dilatoriness of the Advocate originally consulted, Justice may be altogether defeated; or be reduced to the necessity of establishing her demands by reiterated suits and immoderate expence.

The engagements which a Barrister contracts by agreeing to be concerned in a cause,
are

are by no means such as to preclude him from flinging it up, if at any time previous to its coming to a hearing, or while it is upon trial in open court, he should discover it to be of that description which it would be improper for him to defend. Though no reservation of this kind may have been expressed in his conversations with his Client ; it is so plainly enjoined by the common principles of rectitude, and so conformable to the settled practice of the Bar, that it must ever be presumed to have been mutually understood. It is not always that a cause bears its true character stamped upon its forehead. Long and intimate acquaintance may be requisite to the discovery of the inherent stain. But whenever it is discovered, let not the Advocate be seduced by erroneous ideas of consistency, by false shame, by avarice, by ambition, by a spirit of rivalry, or by a fondness for displaying his talents, to persist in the attempt, and thus transfer a part of the disgrace, and of the guilt, from the cause to himself.

If the Barrister thinks it right, after examining into the nature of a suit at the request
of

of one of the parties, to decline being his Advocate ; it can scarcely ever be fitting in the common course of things for him to engage in it on the other side. He would be in perpetual danger of inadvertently making use of knowledge confidentially communicated to him by the first applicant. And even if he should be able to guard against it by rigid circumspection, he would still have to contend with the charge of perfidy, which would almost infallibly be circulated by his opponents ; and might readily gain credit with the public, prone to lend a willing ear to rumours disadvantageous to eminent characters.

The Barrister cannot be ignorant that, by undertaking a cause, he impliedly promises to give that degree of attention to it in every stage of its progress, which in his conscience he deems sufficient, and which the client may reasonably demand. If therefore he undertakes it at a time when he knows that the pressure of prior claims, or a multiplicity of other inevitable avocations, makes it probable that he shall not have the requisite leisure, and does not previously explain his situation to
his

his employer, he is guilty of deliberate falsehood.

When once he has consented to accept the charge, an upright Advocate will exert himself with diligence to become thoroughly master of every important circumstance of the case. Unwilling to be instrumental in leading his Client to persist, by holding out to him rash hopes of success, or to recommend on a hasty and superficial view any particular mode of conducting the suit; he will explore every branch of the business with accuracy, caution, and impartiality. He will carefully weigh the contents of the papers and instruments delivered to him. By repeatedly questioning and sifting his Client, he will at length draw forth that full and complete account which, though generally to be obtained from him by persevering interrogations, yet, from the natural unwillingness of men to discover the weak points of their own cause, is scarcely ever voluntarily offered. He will enquire and revolve what is to be urged in opposition to the claims of his employer. He will set on foot, as far as circumstances admit, by means
of

of subordinate agents, a vigilant search after collateral proofs and auxiliary documents, capable of throwing light on either side of the question. He will not omit the investigation of parallel or analogous cases which have already been decided in courts of justice; nor hesitate to apply for advice to other Counsel, if, through the perplexing circumstances of the case before him, he should find himself unable to form a decided judgement, or should be considerably distrustful of his own opinion.

If after full deliberation the prosecution of the suit to trial be finally determined, he will not prefer a particular method of proceeding, from views of personal emolument, to another more eligible for his employer; and if two methods appear equally conducive to ultimate success, he will advise that which promises to be the least irritating, dilatory, and expensive both to his Client and to the opposite party. When consulted respecting the evidences (f)

to

(f) The Counsel frequently leaves his purveyor the Attorney to collect as many witnesses as possible, that he may be able to call a greater or a less number as he shall

to be brought forward, he will not burthen his own side with an unnecessary number; nor purposely take measures, otherwise needless, with a view to lead the other party to impose a similar burthen on themselves. He will not countenance an extravagant expenditure of parchments, writs, and other implements of legal artillery; although by connivance he might conciliate the favour and future recommendations of a rapacious Attorney.

Such are the duties (*g*) of a Barrister while the cause is on its way to the proper tribunal.

find it expedient. Cases however may occur, in which, at the same time that he takes all reasonable precautions to ensure success to his Client, he may be able greatly to lessen his expences by pointing out evidences whose attendance is not requisite. Such opportunities a conscientious Advocate will never disregard.

(*g*) The duty of giving honest advice, and of taking pains by sufficient reflection, by reading, and, if difficulties occur, by consulting other professional men, to render that advice sound and correct, attaches no less on the Barrister when the matter in question is of a private nature, than when it is to be brought by him before a Court of Justice. And the injury arising to those who apply to him, from his want of integrity or of attention, may prove as great in the former case as in the latter.

Let

Let us now attend to the obligations incumbent on him when it arrives there.

2. By attending to the nature of the situation in which a Barrister stands, it will be easy to discern what kinds of arguments he may conscientiously bring forward in support of the cause which he has undertaken. He is avowedly the advocate of a particular side of the question. The judges, the jury, the parties involved in the dispute, the whole audience before whom he pleads, the public, whose interest is always concerned in the final decision, consider him as acting in that capacity. They expect to hear from him every adjudged case, every fact, every direct or analogical argument founded on precedent or on fact, which he is persuaded ought to have an influence propitious to his cause on the scale of legal justice. They expect more from him. They know that it pertains to his character to reflect that the Court may determine, and rightly determine, in his favour, on grounds which previously to the trial he might regard as not entitling him to success. They expect him therefore to produce every train of legal

B b 2

reasoning,

reasoning, though to his own mind it may appear inconclusive, which he hopes may yet be declared satisfactory by an able and impartial tribunal. They expect him to take advantage of informalities and errors in the proceedings of his adversaries, as far as he is fairly authorized by law and custom. They expect him to press, to strengthen, and to decorate his own cause, and to invalidate the efforts of his opponents, by manly and honest eloquence.

In adopting a line of conduct corresponding to these not improper expectations, he is guiltless of injustice and deceit. The weapons which he uses are recognized by the rules of fair and honourable war; and he has a right to handle them as effectually as he is able. But he has no right to have recourse to arms which integrity would blush to employ, or which are proscribed by the established mode of forensic hostilities. He is not at liberty to assert any false proposition; nor to urge as a fact, what he knows never to have taken place; nor to advance as a principle of law, what he is conscious that statutes and legal usages contradict. Practices of this kind are of so scandalous a

nature, that he who should indulge himself in them would not only prove himself devoid of uprightness of heart; but would be held to have departed from the professional point of honour, and would fall into merited and universal disgrace.

There are however other deviations from the line of duty which occur not unfrequently at the Bar; and are of too indeterminate a kind to be accurately specified, and expressly prohibited by general rules. They of course escape, except in very flagrant cases, the open reprehension of the Court, and the public censure of the profession. Each individual Barrister is left to secure himself from the danger, by purity of intention and sensibility of conscience. The following observations relate to some of the practices in question,

As the Barrister, when pleading in Court, ought to shun with the utmost solicitude the appearance of being urged on by malice or personal inveteracy; of being induced to engage in the business, not from a desire to substantiate right and promote the public good, but from

eagerness to hunt down a private enemy ; so he ought to secure his breast with unremitting vigilance from the intrusion of bitterness and malevolence towards the opposite party. Whether therefore the cause in which he is concerned leads him to attack or to defend ; whether he contends for the maintenance of rights enjoyed, or for the recovery of such as are withheld ; for the vindication of innocence ; for the reparation of injuries ; or for the punishment of crimes ; let him resolve from the outset to preserve a temper unruffled by provocations, and to regulate his thoughts, his words, and his whole conduct, by the christian precept of doing to others as under similar circumstances he might justly expect them to do to him. If actuated by this principle, he will beware of being so carried away by the rapidity of his own motion, so heated in action, so thrown off his guard, as to lose his composure and self-possession ; and to make assertions, to advance arguments, to practise arts and give way to emotions, which in his cooler and more collected moments he would condemn. He will uniformly act with candour towards the Client of his antagonists:

he

he will not endeavour to excite unjust prejudices against him ; nor avail himself of those which may already have been excited. He will be anxious to separate the question of law from that of character, in all cases in which they are not necessarily connected ; and even where they are blended together, far from loading the man, against whom he demands a verdict, with calumnious obloquy and ungenerous reproaches ; he will not seek to depreciate, nor hesitate to avow, the merits which the object of his attack may possess. He will not represent the cause which he supports, or the sentence which he requires, as more important than he believes them to be to the public welfare. He will spontaneously undeceive the Court, if he should discover them to entertain conceptions of the matter before them in any respect erroneous, though he should foresee that his ingenuousness will be disadvantageous to his cause. If his proofs rest on presumptions and probabilities alone, he will not contrive indirectly to convey an impression that he is arguing from acknowledged facts ; nor will he boldly pronounce a mass of circumstantial evidence entitled to a

degree of weight which he is convinced it ought not to obtain. He will reflect that exaggeration, however it may have been defined by the masters of rhetoric, generally proves, according to modern usage, but another name for falsehood. He will not pay court to the foibles, nor avail himself of the prepossessions, of the Judge. He will not strive to impose on the ignorance of the Jury (*b*), nor entrap them into the service of his Client, by practising on their partiality for himself. In urging legal argument, as well as in relating transactions to them, he will study to lay every particular before them with fairness and perspicuity; and in such a manner as he deems most likely to put them into possession of the true nature of the case. In addressing them, while he avails himself of his powers of oratory to raise in their breasts a sympathetic concern for the person whom he defends, and to place his claim before them in the most attractive garb with which sincerity will permit him to invest it; he will not attempt to pervert their

(*b*) The conduct of some Counsel in this respect is as highly to their honour, as that of others is said to be disgraceful and unjust.

judgement

judgement by leading them to view the subject merely through the dazzling medium of their passions.

Towards the evidences produced, whether on behalf of the plaintiff or of the defendant, he will conduct himself according to the principles of fair dealing. He will admonish all of them with equal impartiality and solicitude of the sacredness of an oath. He will not represent those who come forward in support of his Client as entitled to be believed, when he discovers that they are unworthy of confidence; he will not defame the witnesses of the adverse party; nor, by suggesting illiberal suspicions and resorting to unreasonable cavils, strive to rob their testimony of the credit which it deserves. He will not overawe their timidity by brow-beating and menaces, nor impose on their simplicity by sophistry and cunning. He will not seek by oblique artifice to lead the evidences on either side to affirm facts of the certainty of which they are doubtful; nor insidiously labour to extract from their words a sense foreign to their intentions. He will abhor the idea of drawing those who
appear

ON THE DUTIES OF

~~never~~ ~~against~~ him into any seeming contra-
~~dictions and perjury~~, when he perceives their
~~intention~~ to be honest, and their story in reali-
~~ty~~ ~~truth~~.

The ~~disorder~~ ~~disorder~~ ordered by Providence, that
in the common course of human events the
maxims and policy are found ultimately
conducive. The number of examples by
which the general proposition is illustrated,
may be increased by referring to what takes
place in the East. The indulgence of unwar-
rantable practices is proved by experience to
be entirely unprofitable to the very cause
and they are intended to assist; and finally
to the character of the man who is ac-
cused of crime to them.

There is one question which has been deter-
mined by the nature, that there are means
of proving a man before a court of justice;
and the one who is consulted respecting the
proceeding to a new trial, may find
that the provisions recently made under
the act of 1822 are applicable to that state

of the business. Several of the considerations alluded to will derive additional force, from the circumstance of the cause having already experienced an unfavourable decision.

III. The third division of our enquiry into the duties of the legal profession respects the peculiar situation of those Barristers who are Members of the House of Commons.

It may be proper however, antecedently to any discussion of the topics expressly belonging to this head, to warn the young Barrister against precipitately and prematurely entering into Parliament. In addition to the preliminary circumstances and motives, already stated in their proper place, which he is bound, in common with every man who deliberates on the fitness of standing forth as a candidate, seriously and impartially to estimate; other considerations resulting from the nature of his professional employment press forward to be taken into the account. If he is not already master of an independent fortune, let him reflect on the danger of being seduced, by the
stronger

stronger attractions of his new avocation, to lose the character and habits of a Lawyer in those of a Politician. If the loss of his seat at a subsequent election, if disappointed expectations of parliamentary eminence, or the pressure of a contracted income no longer to be withstood, should drive him back to Westminster Hall; in vain may he hope to overtake his former companions at the Bar, who began their career together with himself, and are now by steady perseverance far on their way to profit and honours; while, in consequence of having been retarded by foreign pursuits, he finds himself advanced but a few steps from the starting-post. It is possible that splendid talents and uncommon exertions might recover the ground which he has lost; but splendid talents fall to the lot of few; and he who is endowed with them is seldom distinguished for uncommon exertions. Better would it have been, had he been contented to have moved in his peculiar sphere, until in process of time he had become too conspicuous to be disregarded or forgotten. Better would it have been, not adventurously to have launched on the troubled ocean of politics,

tics, until he had secured to himself in his own province the refuge of a safe and sheltered harbour.

The most obvious and the most powerful temptation to which the Lawyer, who is likewise a Member of the House of Commons, stands exposed, is that of being imperceptibly led to prostitute his professional attainments and character for the sake of political advancement. This ensnaring lure will be particularly formidable to his integrity, if, in consequence of rashly entering into Parliament early in life, he has neglected his proper business; or, depressed by the superior abilities and good fortune of his competitors at the Bar, has made long and hitherto ineffectual struggles to arrive at legal eminence. Yet it is not seldom that it captivates the pleader in the fulness of practice, and in the height of reputation; who adding to his other honours that of being one of the popular representatives, perceives that, by a dextrous management of his eloquence and suffrage, he may open to himself a road to stations of the highest dignity and emolument. It cannot be sufficiently lamented, that through
the

the predominance of that party-spirit by which this nation has long been distracted and disgraced ; and through the loose and superficial notions of morality prevalent among public men, notions teaching them to consider almost every measure as justifiable which they deem to be expedient for themselves and their friends; these methods of rising, and others equally unbecoming, are by no means stigmatized with the infamy which they deserve. The effect which the frequency of such practices, and the little censure attached to them, ought to produce on the mind of a reflecting and conscientious man, is that of determining him to guard against being betrayed into them with redoubled vigilance and caution. He will not suffer himself to be taken in tow, like a disabled frigate, by the embattled squadrons of Ministry or of Opposition ; but will resolutely steer an independent course, and at all times be ready to hoist his sails to the wind, from whatever point of the compass it may blow, if it be likely to conduct him forward in the track of public happiness. If he should finally accept employment or promotion, he will not do it until he has given his country
sufficient

sufficient grounds to conclude that his elevation is not the stipulated return for guilty compliance and venal servility; but the reward of professional merit, of warm and unblemished patriotism.

Another temptation, to which a parliamentary Lawyer of talents and connections is very liable, is that of acquiring an undue partiality in favour of the influence of the Peerage in the British Constitution. In the House of Lords he beholds many of the celebrated ornaments of the Bar resting in honourable repose, perhaps invested with high official situations. He beholds the more fortunate of his cotemporaries and companions successively arriving at the same haven. He listens to the voice of ambition, which tells him that ere long he will anchor by their side. Actuated by these hopes, the completion of which, not improbable in itself, appears to his eager inclinations every thing but certain; he becomes prone to extend, even at the expence of the powers which he now possesses as a Member of the House of Commons, the authority and privileges which he expects hereafter to share

as a Peer, and to transmit to his latest posterity.

Such are the failings into which a Barrister who has a seat in the legislature may be seduced by motives of interest. There are others into which it is highly probable that he may be impelled by habit. I have recently spoken of the danger which he incurs of forgetting his professional character. I now speak of the hazard which he runs of remembering it too well. The Lawyer in the exercise of his peculiar functions is avowedly an advocate of one side of a question. It is his known office to allege, within certain limits, every thing which he judges likely to conduce to the success of his cause; and, under similar restrictions, to raise every objection, either in point of fact, or of probability, or of form, by which he may hope to impede or to prevent the success of the opposite party. But the situation of a Member of Parliament, when engaged in debate, whether it be in a plan of attack or of defence, is fundamentally different. He is the advocate, not of this or of that particular measure, but of the national

national welfare ; not of this or of that individual, but of the people of Great Britain. He is to urge no arguments which he does not think fairly applicable to the subject under discussion, and such as ought to have an effect on the decision of the House. He is not to avail himself of the imprudence and errors of those who maintain an opinion adverse to his own, in order to carry into execution a scheme which his sober judgement disapproves; or to thwart the proposals of persons arranged under the banner of an obnoxious political chieftain, when he feels himself constrained to admit that the accomplishment of them promises an increase of public happiness. The reason of this difference is obvious. The Barrister simply states his arguments, and leaves others to pronounce on their validity. The Member of Parliament unites, with the office of a debater, that of a Judge. The Barrister possesses no voice in determining the sentence which he solicits. The Member of Parliament, after having spoken in favour of a bill, contributes by his vote to enact it into a law. It is obvious then that a Lawyer who acts in both capacities, however he may be preserved by his

rooted habits from adopting in court the ill-timed liberality of a parliamentary orator, will be in considerable danger of introducing into his political exertions the no less ill-timed narrowness of *ex parte* pleadings. He will not find it as easy to divest himself of his legal practices as of his legal habiliments. He will not readily forget in the evening, when contending in the House of Commons, the character in which he had in the morning contended in Westminster Hall.

The effects of habit, unless they are provided against with early and scrupulous care, will be no less conspicuous in his style and manner than in the nature of his reasoning. He will manifest a propensity to the use of cramp terms and technical jargon; to an ostentation of methodical arrangement; to subtle and refined distinctions; to a dry and uninteresting mode of delivery; to petulant and snappish altercation. It is rarely that the House of Commons exhibits several cotemporary instances of Barristers, who have shaken off the defects almost inseparable from their profession; and display that bold and impassioned

sioned eloquence calculated to sway a popular assembly.

The Parliamentary Lawyer may be of eminent use in protecting the existing laws, and the established course of legal proceedings, from being gradually impaired or unnecessarily varied either through ignorance or design. He is not unfrequently consulted, and his suggestions are sometimes perhaps adopted without public acknowledgment, by the private Member of Parliament; who, however able to discover defects in the existing statutes, and hardships resulting from their operation, is not always competent to produce a remedy capable of being commodiously incorporated into a system complicated like that of our laws, and composed of so many jarring elements. But let the Barrister beware lest his attachment to precedent, and his general abhorrence of innovation, topics on which there is the less occasion to dilate at present, as they have been amply discussed in a former part of this chapter, lead him indiscriminately to oppose salutary changes and reforms. More especially let him learn to

suspect himself, to sift his motives, and search his heart to the bottom, if he finds himself on the verge of hastily resisting, or interfering with some of the powers, privileges, or forms of Courts of Justice, and their dependencies; or proposals apparently pointing to the extension of some of the rights of the people. And if he perceives his brethren of the profession united in countenancing or in opposing any particular measure; let him be on his guard against being induced to co-operate with them rather by sympathy, and the *esprit de corps*, than by fair and deliberate conviction.

The Barrister who has a seat in the House of Commons is not to forget his Clients at the Bar, nor to sacrifice their interests to his political pursuits. It may indeed be alleged, and with truth, that his employers are conscious of his parliamentary avocations; and, by spontaneously preferring his assistance to that of another Counsel, shew themselves willing to submit to the inconveniences necessarily arising from them. But he is not to make use of this plea as an excuse for needless inattention

attention to their concerns; nor, for wilfully failing to satisfy the expectations, which he knows himself to have excited in their minds.

It commonly happens that a Parliamentary Lawyer of distinguished merit has the option, sooner or later, of one of those high legal situations, the possessors of which are considered as in the immediate service of the Crown. The observations already made in a former chapter appropriated to the duties of the Executive Officers of Government, though without a direct reference to these particular posts, may sufficiently explain the general motives by which he ought to be influenced in accepting or declining the station proposed; in discharging its duties; and, finally, in resigning it. It remains only to add the following very necessary caution: That he is not to conceive himself, when possessed of the office, as leagued on the side of the Crown against the People; nor pledged to support the existing Administration in measures at which his understanding and conscience revolt; nor at liberty to pursue as libellers and

fomenters of sedition, those who censure the measures of Government, or canvass any real public grievances, with candour, fairness, and moderation.

IV. Our fourth general head was allotted to an enquiry into the peculiar duties of Judges.

Among the many important advantages resulting to society from the institution of an order of Barristers, we are to place this in the foremost rank; that it supplies a continual succession of men qualified and worthy to preside in the Courts of Justice. Were it not for this nursery, in which Merit is trained under the directing hand of Experience; this probationary stage, on which the Student at once makes himself master of his profession, and gives public proof of his attainments; how could we hope, in a country like Great Britain, wherein the unlimited diffusion and complicated nature of property; the possession of freedom, which leaves nothing to be determined by the arbitrary will of a superior; the extension of commerce, and the magnitude

of the national revenues, have rendered the laws so numerous and so intricate, to fill the tribunals with Judges to whose talents and integrity we might safely commit our fortunes, our characters, and our lives? Theirs is an office for which young men are little adapted. Young men would prove deficient in the requisites of knowledge and practical wisdom; and would seldom be found endowed with that sobriety of judgement, and that degree of patience, which are essential to the proper discharge of so important a trust. Yet were it not for the practice of the Bar, where could the future Judge employ his less steady years in gaining these indispensable qualifications? Or, were we to suppose them at length attainable by private and persevering application to the study of written authorities; and a seat on the Bench to be far more profitable and even more honourable than it is at present; what candidate, amidst the many objects of more ready acquisition continually offering themselves to his eye, would fix his views on this distant prize, not to be reached but by a slow and laborious journey of many years; or, after selecting it, would have constancy of mind both

to persevere in the pursuit, and to render himself deserving of final success? Of what young man of limited finances, and of it from persons of that description that the greatest and most meritorious exertions are naturally to be expected, would think it consistent with common prudence to risk his time and fortune in a toilsome, protracted, and precarious enterprise; while conscious that he might find himself in the end disappointed in his most flattering prospects, and overwhelmed by penury and distress?

Whenever we look on the profession of the Law as the source from which the supreme judicial magistrates are to be derived, we discover in that consideration a powerful additional reason for solicitude, that it may not be suffered to fall into such hands as might lower it in the national opinion. That solicitude will be increased by the recollection of another very important benefit, which accrues to the community from the members of that institution; a benefit which will be fitly noticed in this place, as it has an immediate reference to the purity and general character of the Judges.

Barriers

Barristers distinguished for abilities, for professional knowledge and experience, and for uniform respectability of conduct, may be regarded as watchmen appointed to superintend the Judges, and judicial proceedings in our courts. The service which they render to their country in this capacity is not always the object of their thoughts; but it is not on that account the less real, or the less valuable. The life of the Soldier is equally preserved by the breastplate which unconsciously repels the thrust of the enemy, as by the comrade who springs forward to avert it. The resistance of the Counsel to improper conduct on the Bench, will commonly be excited by zeal for the interests of his Client; but there may also be times when it will be originally roused and continually augmented by genuine principles of patriotism. We are not however to measure the utility of Barristers in this particular line of duty, merely by the instances of misconduct which they actually detect, and of abuses which they actually reform. We are to bear in mind the innumerable openings which the vast and intricate system of the laws must afford to misconduct and abuses. And if a
Judge

as a Peer, and to transmit to his latest posterity.

Such are the failings into which a Barrister who has a seat in the legislature may be seduced by motives of interest. There are others into which it is highly probable that he may be impelled by habit. I have recently spoken of the danger which he incurs of forgetting his professional character. I now speak of the hazard which he runs of remembering it too well. The Lawyer in the exercise of his peculiar functions is avowedly an advocate of one side of a question. It is his known office to allege, within certain limits, every thing which he judges likely to conduce to the success of his cause; and, under similar restrictions, to raise every objection, either in point of fact, or of probability, or of form, by which he may hope to impede or to prevent the success of the opposite party. But the situation of a Member of Parliament, when engaged in debate, whether it be in a plan of attack or of defence, is fundamentally different. He is the advocate, not of this or of that particular measure, but of the national

national welfare ; not of this or of that individual, but of the people of Great Britain. He is to urge no arguments which he does not think fairly applicable to the subject under discussion, and such as ought to have an effect on the decision of the House. He is not to avail himself of the imprudence and errors of those who maintain an opinion adverse to his own, in order to carry into execution a scheme which his sober judgement disapproves; or to thwart the proposals of persons arranged under the banner of an obnoxious political chieftain, when he feels himself constrained to admit that the accomplishment of them promises an increase of public happiness. The reason of this difference is obvious. The Barrister simply states his arguments, and leaves others to pronounce on their validity. The Member of Parliament unites, with the office of a debater, that of a Judge. The Barrister possesses no voice in determining the sentence which he solicits. The Member of Parliament, after having spoken in favour of a bill, contributes by his vote to enact it into a law. It is obvious then that a Lawyer who acts in both capacities, however he may be preserved by his

rooted habits from adopting in court the ill-timed liberality of a parliamentary orator, will be in considerable danger of introducing into his political exertions the no less ill-timed narrowness of *ex parte* pleadings. He will not find it as easy to divest himself of his legal practices as of his legal habiliments. He will not readily forget in the evening, when contending in the House of Commons, the character in which he had in the morning contended in Westminster Hall.

The effects of habit, unless they are provided against with early and scrupulous care, will be no less conspicuous in his style and manner than in the nature of his reasoning. He will manifest a propensity to the use of cramp terms and technical jargon; to an ostentation of methodical arrangement; to subtle and refined distinctions; to a dry and uninteresting mode of delivery; to petulant and snappish altercation. It is rarely that the House of Commons exhibits several cotemporary instances of Barristers, who have shaken off the defects almost inseparable from their profession; and display that bold and impassioned

sioned eloquence calculated to sway a popular assembly.

The Parliamentary Lawyer may be of eminent use in protecting the existing laws, and the established course of legal proceedings, from being gradually impaired or unnecessarily varied either through ignorance or design. He is not unfrequently consulted, and his suggestions are sometimes perhaps adopted without public acknowledgment, by the private Member of Parliament; who, however able to discover defects in the existing statutes, and hardships resulting from their operation, is not always competent to produce a remedy capable of being commodiously incorporated into a system complicated like that of our laws, and composed of so many jarring elements. But let the Barrister beware lest his attachment to precedent, and his general abhorrence of innovation, topics on which there is the less occasion to dilate at present, as they have been amply discussed in a former part of this chapter, lead him indiscriminately to oppose salutary changes and reforms. More especially let him learn to

suspect himself, to sift his motives, and search his heart to the bottom, if he finds himself on the verge of hastily resisting, plans interfering with some of the powers, privileges, or forms of Courts of Justice, and their dependencies; or proposals apparently pointing to the extension of some of the rights of the people. And if he perceives his brethren of the profession united in countenancing or in opposing any particular measure; let him be on his guard against being induced to co-operate with them rather by sympathy, and the *esprit de corps*, than by fair and deliberate conviction.

The Barrister who has a seat in the House of Commons is not to forget his Clients at the Bar, nor to sacrifice their interests to his political pursuits. It may indeed be alleged, and with truth, that his employers are conscious of his parliamentary avocations; and, by spontaneously preferring his assistance to that of another Counsel, shew themselves willing to submit to the inconveniences necessarily arising from them. But he is not to make use of this plea as an excuse for needless inattention

attention to their concerns; nor, for wilfully failing to satisfy the expectations, which he knows himself to have excited in their minds.

It commonly happens that a Parliamentary Lawyer of distinguished merit has the option, sooner or later, of one of those high legal situations, the possessors of which are considered as in the immediate service of the Crown. The observations already made in a former chapter appropriated to the duties of the Executive Officers of Government, though without a direct reference to these particular posts, may sufficiently explain the general motives by which he ought to be influenced in accepting or declining the station proposed; in discharging its duties; and, finally, in resigning it. It remains only to add the following very necessary caution: That he is not to conceive himself, when possessed of the office, as leagued on the side of the Crown against the People; nor pledged to support the existing Administration in measures at which his understanding and conscience revolt; nor at liberty to pursue as libellers and

fomenters of sedition, those who censure the measures of Government, or canvass any real public grievances, with candour, fairness, and moderation.

IV. Our fourth general head was allotted to an enquiry into the peculiar duties of Judges.

Among the many important advantages resulting to society from the institution of an order of Barristers, we are to place this in the foremost rank; that it supplies a continual succession of men qualified and worthy to preside in the Courts of Justice. Were it not for this nursery, in which Merit is trained under the directing hand of Experience; this probationary stage, on which the Student at once makes himself master of his profession, and gives public proof of his attainments; how could we hope, in a country like Great Britain, wherein the unlimited diffusion and complicated nature of property; the possession of freedom, which leaves nothing to be determined by the arbitrary will of a superior; the extension of commerce, and the magnitude

of the national revenues, have rendered the laws so numerous and so intricate, to fill the tribunals with Judges to whose talents and integrity we might safely commit our fortunes, our characters, and our lives? Theirs is an office for which young men are little adapted. Young men would prove deficient in the requisites of knowledge and practical wisdom; and would seldom be found endowed with that sobriety of judgement, and that degree of patience, which are essential to the proper discharge of so important a trust. Yet were it not for the practice of the Bar, where could the future Judge employ his less steady years in gaining these indispensable qualifications? Or, were we to suppose them at length attainable by private and persevering application to the study of written authorities; and a seat on the Bench to be far more profitable and even more honourable than it is at present; what candidate, amidst the many objects of more ready acquisition continually offering themselves to his eye, would fix his views on this distant prize, not to be reached but by a slow and laborious journey of many years; or, after selecting it, would have constancy of mind both

to persevere in the pursuit, and to render himself deserving of final success? Of what young man of limited finances, and of it from persons of that description that the greatest and most meritorious exertions are naturally to be expected, would think it consistent with common prudence to risk his time and fortune in a tollsome, protracted, and precarious enterprise; while conscious that he might find himself in the end disappointed in his most flattering prospects, and overwhelmed by poverty and distress?

Whenever we look on the profession of the Law as the source from which the supreme judicial magistrates are to be derived, we discover in that consideration a powerful additional reason for solicitude, that it may not be suffered to fall into such hands as might lower it in the national opinion. That solicitude will be increased by the recollection of another very important benefit, which accrues to the community from the members of that institution; a benefit which will be fitly noticed in this place, as it has an immediate reference to the purity and general character of the Judges.

Barristers

Barristers distinguished for abilities, for professional knowledge and experience, and for uniform respectability of conduct, may be regarded as watchmen appointed to superintend the Judges, and judicial proceedings in our courts. The service which they render to their country in this capacity is not always the object of their thoughts; but it is not on that account the less real, or the less valuable. The life of the Soldier is equally preserved by the breastplate which unconsciously repels the thrust of the enemy, as by the comrade who springs forward to avert it. The resistance of the Counsel to improper conduct on the Bench, will commonly be excited by zeal for the interests of his Client; but there may also be times when it will be originally roused and continually augmented by genuine principles of patriotism. We are not however to measure the utility of Barristers in this particular line of duty, merely by the instances of misconduct which they actually detect, and of abuses which they actually reform. We are to bear in mind the innumerable openings which the vast and intricate system of the laws must afford to misconduct and abuses. And if a
Judge

Judge is rarely hurried into them by inadvertence, or seduced by sinister views; let it be considered how much his caution must be increased, and his integrity confirmed, by the consciousness that he is acting in the presence of men scrupulously observant of every step which he takes; bound by interest as well as duty to expose his errors; and perhaps not inferior to himself in professional attainments and public estimation.

The Barrister to whom a seat on the Bench is offered, cannot conscientiously accept it, if he knows himself to be incompetent to discharge its duties, through a deficiency of health, of talents, or of knowledge; or if he is convinced, that through some peculiarities in the situation of himself and his family, he ought to decline it; or that in consequence of excluding a more deserving competitor, he should contribute less to the stock of general good by undertaking than by refusing so important a post. If such be his deliberate opinion, let him listen not to the allurements of ambition, but to the sober dictates of virtue.

Our immediate concern however is with the actual Judge (*k*).

We may in the first place consider the duties of a Judge immediately relative to a trial and its consequences; and afterwards advert to some detached particulars which may most commodiously be reduced under the head of general conduct.

In treating of moral qualifications essential to a Judge, many words need not be employed on that which is of all the most important, incorruptible integrity. It is a part of his character so evidently indispensable, whether it be his object to discharge the various duties of his office with advantage to the public, or to preserve himself from the blackest criminality, and from indelible disgrace, that it is scarcely necessary to be enforced. The

(*k*) The remainder of this chapter will be employed in treating of the moral obligations incumbent on the Twelve Judges, as they are usually denominated. But many of the subsequent observations, if applicable to the Judges, will be no less applicable to the duties of the Lord Chancellor, and of others who act in a judicial capacity.

mind

mind of man naturally recoils from the extremes of guilt and iniquity. The temptation too is in the present instance nearly or altogether removed by the liberal emolument and permanent situation of the judges; and by the wisdom of the judicial system in this country, which, as far as human precautions can avail, seems to preclude the possibility of undetected corruption.

Patient and uniform attention during the progress of a trial should mark the conduct of an upright Judge. His duty is to imprint on his memory every leading fact and important circumstance on either side of the question; to listen without bias to the contending Counsel; and impartially to examine the adverse witnesses. He will not attempt to shew his sagacity by ostentatiously anticipating what he might shortly have heard from the Bar; nor gratify his vanity, or indulge his weariness, by needlessly interrupting the pleaders and evidences, and preventing pertinent interrogations and replies. He will express a marked disapprobation of all forms and proceedings adopted for the purpose of adding to the charge, or protracting

protracting the duration of the contest ; and on previous application will repress them by suitable censures, by striking irrelevant parts out of indictments, and by all other means in his power. While he unites in his own demeanour affable condescension with sober dignity ; he will check in the Advocates all unbecoming artifices, all brow-beating, all attempts to confound and embarrass the witnesses, all intemperate heat, all personal asperity, and more especially every approach to virulence and slander : and will not be led by mistaken delicacy towards the Counsel, to content himself with listening with silent dislike ; but will stand forward with active and pointed interposition to check any part of their behaviour which deserves reprehension. He will shew by his fairness and candour that he has not imbibed any of the prejudices which may be prevalent in the country respecting the cause or the parties at issue. If he perceives the prisoner in a criminal cause, or one of the parties in a civil suit, to be oppressed by combination, power, or stratagem, or likely to be overcome by the superiority of talents arrayed against him ; the Judge will regard himself

as called upon to assist, as far as equity will permit, the weaker side; and so to level the ground, that truth and justice (*l*) may not be obstructed in their course. He will impress on all parties the sacred nature of oaths, and cause them to be administered with solemnity and solemnity. He will chastise by speedy and exemplary punishment the prevaricating and the perjured witnesses. He will not suffer the fraudulent Attorney detected in his machinations to escape unpunished; nor permit him to involve himself and others in future villanies by continuing (*m*) the exercise of

(*l*) "The Judge shall be counsel for the prisoner; that is, shall see that the proceedings against him are legal and strictly regular." Blackstone, iv. 355. This rule the learned Judge terms "a noble declaration of law."

(*m*) The examination of Attornies by the Judges previously to their being admitted to practice is now become a mere form. The deputies, to whom that business is necessarily consigned, are too apt to admit indiscriminately all who apply. It would be well if means were devised of instituting a serious enquiry not only as to knowledge, but also as to moral character. A proper step has been taken of late, in requiring the names and places of abode of all who desire to be admitted to practice to be hung up in public during a whole term.

his

his profession, in his own name, nor (if it be possible to prevent the fraud) under cover of a collusive partnership with some unprincipled associate. In every case which admits of being concluded by arbitration, he will earnestly recommend that less irritating mode of decision ; and will never pass by an opportunity of preventing or terminating animosities, dissensions, and quarrels, and leading the angry disputants by mutual concessions to sincere and durable reconciliation. He will reverence the institution of Juries as the safeguard of English liberty ; and will never seek to encroach on their legal power, nor endeavour, by resorting to fictitious or refined distinctions between the fact and the law, to withdraw any part of the question from their jurisdiction into his own. In addressing himself to the Jurors, he will avoid the insincerity of studied compliment, and the parade of eloquence and learning. He will studiously accommodate himself to the level of their apprehension. He will state to them the sum of the evidence on each side of the question in perspicuous order, and with perfect impartiality ; recapitulating, selecting, and

and collating the material points, and carefully remarking the circumstances which tend to confirm or to impair the credit of suspicious witnesses. In assisting the Jury with his professional knowledge he will observe the instructions of Lord Chancellor (s) Bacon: " Judges ought to remember that their office is *ius dicere*, and not *ius dare*; to interpret law and not to make law, or give law. Else will it be like the authority claimed by the Church of Rome; which under pretence of exposition of Scripture doth not stick to add and alter, and to pronounce that which they do not find, and by shew of antiquity to introduce novelty."

In the interpretation of all laws, and especially of penal laws, a conscientious Judge will avoid strained inferences and forced constructions. He will not attempt to awaken the slumbering rigour, nor to revive the obsolete authority, of statutes enacted in times of heat and turbulence, and ordaining unusual

(s) In the beginning of his *Essay on Judicature*.

and unnecessary punishments. When the Law, trusting to the integrity and discretion of its officer, permits him to select from several penalties that which he shall deem, in the peculiar circumstances of the case under consideration, most conducive to the public welfare; he will faithfully attend in the exercise of this power to the purpose for which it was committed to him; and shun the equally mischievous extremes of rendering the administration of justice odious by immoderate severity, and of encouraging guilt by injudicious lenity and forbearance. He "will not (*o*) respect the person of the poor, nor honour the person of the mighty." He will neither act with unfairness towards those in an humble station, nor be betrayed by pity (*p*) into groundless prejudices in their favour. And he will discard all improper deference to rank or fortune; and will rather teach those in the upper

(*o*) Levit. xix. 15.

(*p*) Thus in another part of Scripture (Exod. xxiii. 3.) it is said, "Thou shalt not countenance a poor man in his cause;" that is, improperly, and out of blind compassion for his poverty. On the other hand, partiality towards the rich and powerful is condemned in a great variety of passages in holy writ.

classes of society to expect their crimes to be chastised with more than usual strictness, than to hope that the circumstances, which render the example of their guilt doubly pernicious, will operate in diminishing its punishment. Whatever be the nature of the case, or the situation of the convict, he will never suffer himself to be induced by fatigue, by pressure of business, or by the importunity of others, to pronounce a final decision, which has not been previously matured by sufficient deliberation. He will reflect on the importance of a just sentence, not only in its immediate effects on the person on whose property, freedom, or life it attaches, but likewise in its future and indefinable operation as a precedent. He will weigh the moral effects likely to result from it, whether they relate to the culprit, or to the community at large; and in every case, as far as is consistent with the general good, that predominant object to which the private advantage of the individual offender must unquestionably be postponed, he will adapt the nature of the penalty to the probable reformation of him who is to suffer it. He will not spontaneously resort to pecuniary fines in punishing

nishing the rich and prodigal. He will not seek to correct the shameless villain by exposing him on the pillory. He will not consign to the lash the sturdy criminal, who, though he laughs at transient pain, might have been deterred at least from repeating his offence, and perhaps weaned from all inclination to repeat it, by the irksomeness of solitude and labour. He will not affix a chastisement disproportioned to the transgression immediately before him, by way of wreaking vengeance on the prisoner for some former act of misconduct. On all occasions, and particularly on the solemn decisions of life and death, he will rejoice when mercy may be allowed to prevail against justice.

When he communicates in civil cases, for the information of the Jury, his opinion respecting the *quantum* of damages to be assigned, let him not overlook any consideration arising either from the nature of the case, or from the situation and circumstances of the parties concerned, which ought to have an influence on their mind, or on his own. In exercising his

discretionary power (g) of granting or refusing costs, it is not sufficient that the Judge should conduct himself with perfect fairness. Let him guard against a failing far more likely to be displayed than want of integrity, the want of adequate deliberation. And let him steadily withhold the necessary certificate from persons, who have evidently resorted to a court of law from the impulse of malice; or who have studied to confound the party accused by the irrelevancy and prolixity of the indictment; or by summoning a special jury, or by any other artifices and manoeuvres, to load their opponents with expence, and to procrastinate the moment of decision.

In passing judgement on a convicted pri-

(g) In the case of trespasses, when the damages assessed by the Jury are under forty shillings, costs are not allowed by law, unless the Judge certifies the action to have been wilful and malicious. In the case of assaults also, when the damages do not amount to forty shillings, the Judge has a power of giving costs. In Courts of Equity it is universally in the option of the Judge, whether costs shall be granted or not. The costs of a Special Jury are not allowed, unless the Judge will certify that there was a proper cause for summoning one.

soner,

soner, and particularly on a prisoner convicted of a capital offence, an opportunity frequently presents itself, of making a deep and salutary impression on the mind both of the unhappy victim of the law, and of all who are witnesses of his condemnation (*r*). A wise and conscientious Judge will never neglect so favourable an occasion of inculcating the enormity of vice, and the fatal consequences to which it leads. He will point out to his hearers the several causes, when they are sufficiently marked to admit of description and application, which have conducted step by step the wretched object before them through the several shades and degrees of guilt to a transgression unpardonable on earth. He will dwell with peculiar force on such of those causes as appear to him the most likely, either from the general principles of human nature, or from local circumstances, to exert their contagious influ-

(*r*) Much offence has sometimes been taken, and with reason, by considerate men, at the conduct of Judges, who, after pronouncing in Court the fatal sentence of the law against unhappy criminals, have appeared in the evening among the thoughtless crowd at the ball-room. Assizes are indeed seasons unfitly chosen for the display of festivity and public amusements.

ence on the persons whom he addresses. And whatever be the crime which is the subject of his animadversions, he will not content himself with considering it in a political light, and displaying its baneful effects on the happiness of society ; but will direct the attention of his audience to those views of the nature and consequences of vice, which are revealed in the awful denunciations of the Gospel. In cases of acquittal, a judicious address from the Judge to the prisoner may frequently guard the latter, if innocent, against those indiscretions, and those connections, which might ultimately have led him into crimes ; if guilty, against subjecting himself in future to the risk of the punishment which he has now chanced to escape. It may also act as a salutary admonition on many among the audience.

Those principles which have guided the conduct of the Judge during the trial of the prisoner, will regulate all subsequent proceedings respecting him. Whether he allows him a respite, as affording the means of better preparation for death, or possibly of clearing up some circumstances which contributed to his conviction ;

conviction; whether he grants him a reprieve; whether he recommends him as a proper object of royal mercy; he will form his determination on the solid grounds of equity and public good. A subordinate regard he will undoubtedly pay to the welfare of the individual, both as being one of the public, and as being the person who in the present moment has the most at stake. But he will feel the necessity of withstanding improper solicitations, however respectable the quarter may be from which they come: he will fortify himself against the effusions of indiscriminate compassion operating in the breast of others; and, difficult as the task may be, against the emotions of improvident sympathy in his own.

II. It remains to subjoin a few remarks on the general conduct of a Judge, which could not be conveniently interwoven among the preceding observations.

The repression of vice, the encouragement of virtue, the security of freedom, and the removal of impediments to the progress of na-

tional happiness ; these are objects which the Judge is bound to promote, as well by the faithful discharge of his judicial functions, as by the uniform tenor of his life. They are objects which will lie near his heart, if he is duly impressed with the recollection of that tribunal, before which he in common with all men is shortly to appear. It will therefore be his constant care that his private conduct shall not reflect disgrace on his public character, and impair the efficacy of his official labours. While conspicuous on the Bench as a chastiser of the wicked, he will strive to be eminent in private life as an example to the good. The venerable name of Hale, highly as it is respected at the Bar, is deservedly no less dear to the friends of religion.

In his addresses to Grand Jurors and Magistrates he will act under the influence of the principles which have been stated. He will not flatter them with professions of respect, which he does not feel : he will not fix their attention on trivial topics ; nor weary it with vague and irrelevant declamation. He will be solicitous, that whatever remarks he shall
direct

direct to them may not only be suited to the occasion on which they are assembled, and the nature of the office which they are to execute ; but may likewise have an immediate and plain reference to local objects, events, discussions, and concerns, as far as they properly fall within the limits of his jurisdiction, and appear entitled to his notice. He will endeavour to meet and dispel prevailing antipathies, whether political or religious ; he will industriously exert himself in allaying animosities and heats ; he will strongly inculcate, and from his heart, not from mere ideas of decorum, the encouragement of industry and good morals, and the discountenancing of idleness and vice, and of every receptacle in which men learn to be idle and vicious. He will strive to restrain gambling in all its various forms ; licentious theatrical exhibitions ; and all other amusements which have an obvious tendency to deprave the innocent and unsuspecting ; nor will he be indifferent as to the continuance of cock-fighting, bull-baiting, and boxing, those unsubdued remains of popular barbarity. The fruit of his labours may not perhaps be very conspicuous at first ; but
let

let him not despair, nor be discouraged. Neither magistrates in their public capacity, nor country gentlemen in their private proceedings, will continue to disregard exhortations repeatedly pressed upon them in open court by a Judge, who commands their respect by his talents, and wins their esteem by his affability and virtues.

Next to the denial of redress, the delay of justice is the greatest hardship which an injured person can sustain. The multifarious and intricate forms according to which every legal process must be conducted, and the immense mass of business from all quarters of the kingdom incessantly crowding our superior tribunals, necessarily contribute to retard the conclusion of each individual suit. The Judge who should slumber on his station, who should impede by his own dilatory sloth the already encumbered course of the law, might justly be deemed an encourager of the crimes which he wilfully forbore to chastise; and a concurrent cause of the grievances which he would not be prevailed upon to remove.

It is the duty of a Judge carefully to abstain from all attempts to draw business into the Court in which he is placed, either to gratify his pride by having a larger quantity of *causes* submitted to his decision than is determined by other tribunals; or to increase his own fees, or the fees (s) of his officers. A multiplicity of suits, from whatever source they may arise, it should be his object as much as possible to check; and he should never be deterred from that line of conduct by an unwillingness to lessen the emoluments of practitioners of the law.

There are few ways perhaps in which a Judge might employ his leisure more to the advantage of the community, than in devising methods of simplifying the proceedings of

(s) In cases when a Judge is allowed to sell offices under him, he is open to the temptation of improperly increasing the fees of the persons who hold them; as the places would thus be more valuable in the event of a future sale: and, for the opposite reason, of discountenancing parliamentary measures, which would have the effect of diminishing the emoluments in question. In fact, the sale of the offices should be abolished, and compensation be made to the Judge in a proper way.

Courts of Law. It is probable that reforms might be adopted in all the Courts of this kingdom, which, without encroaching on those fundamental principles which intrinsic excellence and the experience of ages may render it unwise to infringe, would produce very salutary effects in expediting decisions, in curtailing expences, and in diminishing the frequency and prostitution of oaths. Were plans of reform maturely digested by an eminent Judge, and by him presented to the Legislature sanctioned with the approbation of his brethren ; the Public, satisfied that whatever originates from such a source will never fail sufficiently to accord with the leading maxims of British jurisprudence, would cast away the doubts and surmises with which it would have beheld the projects of a private Member of Parliament, and would no longer be panic-struck by the bare name of Innovation. But if the discharge of their customary functions should preclude those who are placed on the Bench from employing themselves in developing the means of remedying defects in the civil and criminal tribunals ; it is at least in their power to countenance whatever is fairly entitled

entitled to support, in the plans for remedying them which are suggested by others. And that Judge would ill deserve his honourable post, who from unwillingness to part with some privilege or emolument, or to acquiesce, it may be, in some accession to the rights of the Jury, should resist a proposed alteration, when convinced that it would be conducive to the public good.

Few circumstances contribute more effectually to stimulate the young Barrister to exemplary conduct and active exertions; few circumstances have a more cheering influence on the mind of the experienced Counsel, when engaged in preparing for the public eye historical or practical disquisitions on subjects of jurisprudence, than the applause of those who have arrived at the summit of their profession. The Judge who feels a due solicitude to bring forward latent abilities, and enlarge the boundaries of legal knowledge, will not neglect to encourage merit in every stage by public approbation; and, whenever an opportunity is afforded him, by a wise distribution of his patronage.

In

In trials in which the decision of the Court depends on the plurality of voices, it is the duty of each Judge to conduct himself on the same principles as he would have done had the final determination of the cause pertained exclusively to himself. While he shews the respect which is due to the Chief of the particular bench to which he belongs, let him not be influenced by selfish views, or by timidity and false shame, rather to surrender the exercise of his understanding than oppose the authority of his superior. If he is himself pre-eminent in rank, let him not harbour a wish for so disgraceful a mark of deference from those who are below him. And whatever be his situation in point of precedence, let him not be dismayed from stating with firmness what he conceives to be law, when called upon to deliver his sentiments either in a Court of Justice or before the House of Lords; although he should know that every one of his brethren entertains a diametrically opposite opinion.

If a Judge is bound steadily to hold the middle track between man and man; he is
under

under an obligation no less solemn to steer an independent course between party and party. Let him not be blinded and biaſſed by miniſterial or anti-miniſterial attachments. Let not the turbid ſtream of politics pollute the fountain of juſtice. Let him not be betrayed into an unmerited and intemperate oppoſition to the Crown and its Executive Officers, when cauſes in which they are concerned come before him, by a deſire of gaining popularity and the reputation of diſintereſtedneſs and patriotiſm ; nor bear hard on the freedom and property of the ſubject, from a puſillanimous reluctance to reſiſt the inclinations of Government, an ambitious deſire for further elevation, or a mercenary wiſh to conciliate the favour of thoſe who diſtribute the preferment and the patronage of the State. That ſacrifice of juſtice to political conſiderations, and that ſubmiſſion to the will of the Crown, which marked the conduct of ſome of the Judges in the earlier periods of our hiſtory, would be more criminal at preſent even than they were formerly. The light which has been thrown in later times on the proper foundations of civil government, and the extent

tent of civil obedience, has taken away from modern Judges the plea of ignorance ; and their entire deliverance from the control of the Crown has in a very great degree lessened the allurements of temptation.

CHAP. X.

ON THE DUTIES OF JUSTICES OF THE PEACE
AND MUNICIPAL MAGISTRATES.

FROM the consideration of the duties of Judges of the Supreme Courts of Law, we naturally proceed to enquire into the moral obligations incumbent on those subordinate Magistrates, who, as the various ramifications branching off from the great arteries convey the blood to cherish and invigorate every portion of the human frame, distribute the salutary streams of justice through every part of the body politic.

Of these Magistrates, Justices of the Peace occupy the most eminent station. Their functions therefore will properly be considered in the first place.

I. The points on which a person who proposes to act as a Justice is primarily bound to
 VOL. I. E c examine

418 DUTIES OF JUSTICES OF THE PEACE

examine himself, are; his motives for undertaking the office, and his competency to discharge its duties. If his purpose originates from a desire to promote the good of the community, and particularly of his own neighbourhood, by a vigorous, impartial, and temperate administration of the laws; by rescuing, if the danger exists, a trust so important from falling into improper hands; and by preventing the many evils and inconveniences which would arise from a large tract of country being destitute of the presence of an upright and active Magistrate; and if with these laudable intentions he unites such a share of legal information, and such a degree of steadiness and self-command, as will enable him in practice to carry them into effect, let him without doubt or scruple persevere. But let him totally abandon his design, or suspend the execution of it until he has reformed his heart and dispositions, if he discovers that he is impelled by sinister views of interest and emolument, by a wish to obtain power for the purposes of oppression, or by a solicitude for personal pre-eminence and political weight in the circle of his connections; or if he is conscious that
he

he is deficient in the requisite knowledge, and has not both the industry to acquire it with sufficient promptitude, and, when acquired, the patience to apply it with sufficient deliberation.

The qualifications indispensably necessary to a Justice of the Peace in the actual discharge of the duties of his office; are calm attention and unwearied diligence in investigating the cases brought before him, and perfect integrity in deciding them. Let him be assiduous in examining and sifting the witnesses on both sides of the question, and beware of assigning too great or too little weight to their testimony on grounds inconsiderately adopted; or through private regard or dislike towards the persons by whom it is delivered, or the culprit whom it affects. Let not the character of the latter be allowed to determine a charge, which ought to be determined by the evidence adduced. The general bad character of an individual is a valid reason for apprehending him for examination, on slighter presumptions than would have been sufficient in the case of a man of good repute, because

420 DUTIES OF JUSTICES OF THE PEACE

it is in itself a very suspicious circumstance; and perhaps for punishing him, when fairly convicted, with somewhat more than common severity, in cases where the Magistrate is empowered to vary the degree of chastisement as he shall think expedient. But it is by no means a valid reason, not even if he is known to have committed in former instances the very crime of which he is now accused, for convicting him on weaker proofs than would have been deemed satisfactory had his integrity been un sullied. The two points which the Magistrate is to investigate are these: Whether the witnesses speak truth; and whether what they allege legally substantiates the charge. Now with respect to the former point, the witnesses seem particularly liable in the case in question to deviate from the accuracy of real fact; unintentionally, from seeing every thing through the medium of prejudice on account of the culprit's character; or intentionally, if they are maliciously disposed towards him, from an expectation that whatever they affirm against such a man will readily be credited. As to the latter point, the Magistrate is bound by the statutes

6

applicable

applicable to the occasion, and by the received rules of evidence which statutes do not define, universally to require those proofs which the law and established usage render necessary to conviction. In every instance let him give sentence not merely with upright intentions, but according to the strict sense of the existing law. This limitation is subjoined as a caution against that propensity which is sometimes discernible in Magistrates; and arises on some occasions perhaps from carelessness, and a desire to avoid the trouble of consulting books and collating statutes, but frequently from benevolent views improperly indulged; to adjudge the cause before them partly or entirely by their own unauthorised ideas of equity. Let the Justice always remember, that his province is not to make or alter the laws of the land, but to pronounce what they have previously enacted; and that in no instance whatever is he to extend his discretion beyond the limits prescribed to it by the Legislature. Within those bounds let him accommodate his decision, as far as may be practicable, to the peculiar features and merits of the business at issue; and give to his benevo-

lence the largest possible scope which is consistent with the public welfare.

Benevolence ought to be in fact so powerful a motive of his conduct, as to be subordinate only to strict and impartial uprightness. If it was the cause of his entering upon his office, it will appear, unless his views and dispositions shall have undergone a change much to be deplored, in the whole course of his practice as a Magistrate. It will manifest itself in various shapes and forms, suited to the se-

veral circumstances in which he has opportunities of exerting it. It will dissuade him, on the one hand, from preferring his personal ease to the interest and convenience of the parties who apply to him for redress; and from sending them back on slender grounds until another day, or keeping them for a long time lingering at his door before he grants them a hearing. And on the other, it will prompt him, when he is fully occupied already, to make known his situation at once to any fresh applicants who may arrive, and not to suffer them to be detained in fruitless expectation. It will teach him uniform composure and mildness of manners; and incline him studiously to practise every

degree of affability and condescension which is consistent with the due support of his authority. It will render him friendly to the person of the criminal, while severe against the crime; a distinction which the accused easily perceive, and often remember with gratitude. It will make him tender towards vagrants, who are frequently treated with indiscriminating harshness. It will dispose him rather to prevent, than to punish, breaches of the law; and on that principle will be the very motive which leads him not uncommonly to chastise early transgressors, and persons convicted of small offences, with considerable rigour, that he may deter them at once from the paths of guilt. It will restrain him, while in all cases, and especially in such as are flagrant, he is duly attentive to the responsibility of the bail produced, from exacting in any case securities disproportioned to the circumstances of the party against whom the complaint is made; from proceeding to a legal enquiry while reasonable hopes remain that the aggressor might be induced, by the reiterated application of the person injured, to make satisfaction; and from issuing an expen-

five warrant, when a sixpenny summons will answer the purpose. It will determine him in adopting measures of prevention or of punishment in the case of offences threatened or committed, to exercise those discretionary powers, which in most instances are confided to him by the law, with lenity and moderation ; and to be guided as to the kind and the degree of the restraint or chastisement which he selects, by a regard to the welfare of the offender himself, as far as it may be compatible with the good of the neighbourhood and of the community. And finally it will on all occasions suggest to him, that among the various ways in which his office enables him to promote the happiness of mankind, he is then employed in a manner not only the most satisfactory to himself, but perhaps the most useful to others, when he acts as a peace-maker ; when he removes secret animosities ; puts an end to open quarrels ; prevents embryo lawsuits by a reference to private (a) arbitration ; and unites the jarring members

(a) These expressions are not to be understood as in the slightest degree exculpating a Magistrate, who permits prosecutions

members of the same family in an oblivion of past misunderstandings, and a renewal of concord and harmony.

A considerable share of firmness of mind (and firmness of mind is by no means inconsistent with that active benevolence which has been inculcated) is absolutely necessary to carry a Magistrate through the duties of his station. It will be requisite in order to ensure to him that steadiness of demeanour, without which he will find it impossible to preserve order and decorum in his justice-room; to restrain loquacity, petulance, impertinence, and rudeness; to curb the bold, and overawe the hardened. It will teach him to proceed with perseverance in the path of rectitude, neither daunted by menaces, public or anonymous, nor by the prospect of giving offence to the wealthy and powerful. But let him not forget that the fortitude which he is to cultivate is the offspring of religion; not the obstinacy which originates from pride. Let

prosecutions to be compounded, when either the law of the land or the public good requires that the offence should be openly punished.

him

him not persist in a wrong measure through shame of retracting, or through dislike to the person who has pointed out the mistake.

A Justice is under an especial tie unremittingly to promote by all right and reasonable means the influence of religion. From the various methods by which he may be enabled in the course of his official practice to diffuse a sense of piety, and an abhorrence of vice, two may be selected as deserving of particular notice. The one is, by never failing to administer oaths with deliberation and solemnity; nor to impress on the careless, the ignorant, and the profligate witness the extent of the obligation incurred, the heinous (*b*) guilt of perjury, and the futility of all attempts to escape that guilt by outward evasive acts, or by concealed mental equivocations. The other, by calling the attention of the culprit

(*b*) In some parts of the country many of the common people who come before Magistrates as evidences, are found to make use of a very blamable latitude in their interpretation of the ninth commandment; and think that they are guilty of no breach of it in deviating, though upon oath, from strict truth, *in favour* of the party accused.

to these very material circumstances ; that his offence, be it what it may, is not merely a breach of the laws of the land, but a sin against God ; and that it is not rendered less criminal in the eyes of his heavenly Judge, by any defect of evidence, or any informality of proceedings, which may shelter it from the cognizance of a human Magistrate.

Every situation and employment in life influences, by a variety of moral causes, the views, manners, tempers, and dispositions of those who are placed in it. The Justice of the Peace can plead no exemption from this general rule. The nature of his authority, and the mode in which it is exercised, have an obvious tendency to produce some very undesirable alterations in his character, by implanting new failings in it, or by aggravating others to which he may antecedently have been prone. His jurisdiction is extremely extensive, and comprises a multiplicity of persons and cases. The individuals who are brought before him are almost universally his inferiors ; and commonly in the lowest ranks of society. The principal share of his
business

business is transacted in his own house, before few spectators, and those in general indigent and illiterate. Hence he is liable to become dictatorial, brow-beating, consequential, and ill-humoured; domineering in his inclinations, dogmatical in his opinions, and arbitrary in his decisions. He knows, indeed, that most of his decisions may be subjected to revival at the sessions: but he may easily learn to flatter himself that he shall meet with no severe censure from his friends and brethren on the Bench, for what they will probably consider as an oversight, or at the most as an error easily remedied, and therefore of little importance. He knows too that he may be called to account before the Court of King's Bench: but he is also aware that great tenderness is properly shewn by Courts of Law to the conduct (c) of a Justice, unless a culpable intention

(c) "The country is greatly obliged to any worthy
 "Magistrate, that without sinister views of his own will
 "engage in this troublesome service. And therefore if
 "a well-meaning Justice makes any undesigned slip in his
 "practice, great lenity and indulgence are shewn to him
 "in the Courts of law; and there are many statutes
 "made to protect him in the upright discharge of his
 "office,

intention on his part is clearly proved ; and that the objects whom he may be tempted to aggrieve are usually too humble, ignorant, and timid, to think of seeking redress except in very palpable and flagrant cases, and frequently too poor to be able to undertake the task of seeking it in any. In consequence moreover of being perpetually conversant in his official capacity with the most worthless members of the community ; destined as it were to register every crime perpetrated within many miles of his habitation ; and witnessing petty acts of violence, knavery, and fraud committed by men who had previously maintained a tolerably good character in their neighbourhood ; he may readily acquire the habit of beholding all mankind with a suspicious eye ; of cherishing sentiments of ge-

“ office, which, among other privileges, prohibit such
 “ Justices from being sued for any oversights without
 “ notice beforehand ; and stop all suits begun, on tender
 “ made of sufficient amends. But, on the other hand,
 “ any malicious or tyrannical abuse of their office is
 “ usually severely punished ; and all persons, who receive
 “ a verdict against a Justice for any wilful or malicious
 “ injury, are entitled to double costs.” Blackstone, vol. i.
 P. 354.

neral

neral distrust ; and of looking with less and less concern on the distresses of the common people, from a vague and inconsiderate persuasion that they seldom suffer more than they deserve. Against these snares and temptations which beset him on every side, and will infallibly circumvent him in a greater or a less degree, if he rests in heedless inattention, or in false ideas of security, let him guard with unremitting vigilance. If they are suffered to undermine those better resolutions, and supplant those better purposes, with which he entered upon his office ; let him not think that he shall escape from the circle of their influence, when he quits the limits of his justice-room. They will follow him into every scene of private and domestic life. The habits of the Magistrate will infect the conduct of the husband, the father, the friend, the country gentleman ; they will render him arrogant and overbearing, sour and morose, impatient of contradiction, obstinate in his designs and undertakings, gloomy, suspicious and unfeeling, uncomfortable to all around him, and more uncomfortable to himself.

It

It is not however sufficient that the Justice of the Peace discharges with fidelity those official duties which rest immediately and exclusively on himself; and strives to preserve his manners, temper, and dispositions, from being injured by the trials to which they are exposed. He is under a no less sacred obligation to superintend the conduct of his subordinate assistants, and particularly of his clerks. When the Magistrate himself is but imperfectly acquainted with the laws which he professes to administer, he frequently degenerates into a passive and mischievous instrument in the hands of a rapacious Attorney; or of some discarded underling of the law, with whose assistance he cannot dispense, and at whose enormities he is consequently led to connive. Reprehensible as a Justice of this description must unquestionably be pronounced, his conduct is innocence itself compared with that of the man, if such (*d*) a character
now

(*d*) That such characters were lately in existence within the precincts of the metropolis cannot be doubted. But it is to be hoped that the Police Bill passed in the last Session of Parliament will deliver the City of Westminster from those perverters of justice, who combined with their
clerks

432 DUTIES OF JUSTICES OF THE PEACE

now remains in existence, who makes it his object to create business for his own emolument; turns the exercise of his authority into an iniquitous traffic; and prompts, encourages, and shares the extortions and scan-

clerks in joint schemes of plunder and peculation; received bribes for connivance from the keepers of disorderly houses; and suffered the young offender to proceed unmolested in the career of villany, until encouraged by impunity he committed a crime of such a nature as to secure to the Thief-taker, and of course to the Magistrate his partner, a handsome reward on conviction. From these imputations Justices of the Peace resident in the country are, I believe, in a great measure free. A celebrated modern poet indeed intimates that they are sometimes accessible to baits of another kind.

—————Examine well

His milk-white hand; the palm is hardly clean;
But here and there an ugly smutch appears.
Foh! 'twas a bribe that left it; he has touch'd
Corruption. Who so seeks an audit here
Propitious, *pays his tribute, game, or fish,*
Wild fowl, or venison, and his errand speeds.

COWPER'S TASK, book iv.

This account, I would hope, is one of those poetical fictions, with which the votaries of the muses delight to embellish their performances. But if the practices here described actually take place, the Magistrate who is a party to them in a single instance ought to be branded with public infamy, and degraded from his office.

daleus

dalous profits of his agents. But the most intelligent and conscientious Magistrate, if he relies with implicit confidence on the good conduct of his clerks, and neglects to keep a watchful eye on them, must be more than commonly fortunate in his choice, if they do not gradually fall into the practice of exacting higher fees than they have a right to (c) demand, and of taking premiums for supposed good offices ; as for promising to procure begging passes for vagrants, or the next hearing on a busy day for a particular party, or to speak to their superior in favour of a person and his cause ; or at least of making improper advantages of their situation, and rendering the attainment of redress expensive to the poor, by availing themselves of legal forms, and artful subdivisions of judiciary proceedings, needlessly to augment the number of their perquisites. Of this last manoeuvre an example frequently occurs in the case of recognizances ; where, if five persons charged

(c) This practice might easily be prevented, were care taken to have a printed copy of the fees allowed to be received hung up, according to Act of Parliament, in a conspicuous part of the office.

as associates in the same offence, are to be bound, the clerk, instead of including all of them in the same recognizance, binds each of them separately, and thus carves out for himself five fees instead of one (*f*). Similar tricks are practised in the case of informations. On the subject of fees it may be added, that the Magistrate himself may on many occasions shew a very laudable spirit of liberality, by remitting or purposely contriving to lessen his own, where the party aggrieved labours under

extraordinary circumstances of hardship or distress. To abstain in general from receiving the common fees of office, (a custom which benevolent Magistrates have sometimes been desirous of adopting, with a view to render justice attainable with perfect facility and without charge) would not apparently

(*f*) In some places the Magistrates have judiciously adopted the plan of giving to every person, when he enters into a recognizance, a printed minute properly filled up, stating the day when he is to appear, and the cause of that promised appearance. A trifling fee is taken for the minute. This plan has proved highly beneficial in preventing instances of distress and hardship similar to those which frequently took place before, in consequence of the individuals who were bound forgetting or neglecting to attend at the appointed time.

be

be attended with effects beneficial on the whole. The immediate consequence would be an immoderate increase of business to the Magistrate himself; and, what would be still worse, an increase no less immoderate of squabbles and contentions among the poor, who would carry every frivolous dispute, every angry word, to the nearest tribunal, with equal loss of temper and of time; if they knew beforehand that their complaints and invectives might be poured forth, and their resentment eventually gratified, without the payment of a farthing. He who is disinterested enough not to wish to accept even that small compensation for his trouble in administering the laws, or rather that exemption from paying a salary out of his own pocket to his clerk, which the ordinary fees afford, will be likely to appropriate what is saved by receiving them to some charitable and useful purpose; and thus render a much greater service to the Public than he would have done by declining to receive them.

The administration of criminal justice ought to be exempt from the operation of any

which Mag
to act as Se
on prosecuti
blame due to
his own cle
them on, ev
should not be
urged, in a n

It remains
of the precedi
ing a few rem
business which
a Justice of th

One of the
functions of th

tion of the laws respecting the poor. To him it belongs to decide all questions concerning the parochial relief to be assigned to those who are unable to maintain themselves and their families. He will have learnt from experience, on the one hand, that parish-officers are very apt to be penurious and hard-hearted ; and on the other, that the poor are sometimes guilty of insolent rudeness and imposition, and unwilling to exert themselves for their subsistence to the utmost of their ability. The avarice and cruelty of the former, and the impertinence, idleness, and extravagance of the latter, he will steadily repress. His solicitude however will not be confined to the discovery of the proper *quantum* of relief : he will be equally anxious to ascertain the best and kindest mode of imparting it ; and will study to secure the observance of that mode by positive injunctions, when he is authorised to give them ; when not, by his earnest recommendation. In cases in which the law entrusts him with discretionary power, he will not on slight grounds oblige a poor man to relinquish his cottage, with all his little domestic property and comforts, and take up his abode in a

business is transacted in his own house, before few spectators, and those in general indigent and illiterate. Hence he is liable to become dictatorial, brow-beating, consequential, and ill-humoured; domineering in his inclinations, dogmatical in his opinions, and arbitrary in his decisions. He knows, indeed, that most of his decisions may be subjected to reversal at the sessions: but he may easily learn to flatter himself that he shall meet with no severe censure from his friends and brethren on the Bench, for what they will probably consider as an oversight, or at the most as an error easily remedied, and therefore of little importance. He knows too that he may be called to account before the Court of King's Bench: but he is also aware that great tenderness is properly shewn by Courts of Law to the conduct (c) of a Justice, unless a culpable intention

(c) "The country is greatly obliged to any worthy Magistrate, that without sinister views of his own will engage in this troublesome service. And therefore if a well-meaning Justice makes any undesigned slip in his practice, great lenity and indulgence are shewn to him in the Courts of law; and there are many statutes made to protect him in the upright discharge of his office,

intention on his part is clearly proved ; and that the objects whom he may be tempted to aggrieve are usually too humble, ignorant, and timid, to think of seeking redress except in very palpable and flagrant cases, and frequently too poor to be able to undertake the task of seeking it in any. In consequence moreover of being perpetually conversant in his official capacity with the most worthless members of the community ; destined as it were to register every crime perpetrated within many miles of his habitation ; and witnessing petty acts of violence, knavery, and fraud committed by men who had previously maintained a tolerably good character in their neighbourhood ; he may readily acquire the habit of beholding all mankind with a suspicious eye ; of cherishing sentiments of ge-

“ office, which, among other privileges, prohibit such
 “ Justices from being sued for any oversights without
 “ notice beforehand ; and stop all suits begun, on tender
 “ made of sufficient amends. But, on the other hand,
 “ any malicious or tyrannical abuse of their office is
 “ usually severely punished ; and all persons, who receive
 “ a verdict against a Justice for any wilful or malicious
 “ injury, are entitled to double costs.” Blackstone, vol. i.
 p. 354.

neral

utions which be
infallibly circu
degree, if he
in false ideas c
unremitting vig
undermine thoi
plant those bet
entered upon I
that he shall ef
influence, wher
justice-room.
every scene of pr
habits of the M
duct of the huf
the country gentl
arrogant and ove
impatient of contr

It is not however sufficient that the Justice of the Peace discharges with fidelity those official duties which rest immediately and exclusively on himself; and strives to preserve his manners, temper, and dispositions, from being injured by the trials to which they are exposed. He is under a no less sacred obligation to superintend the conduct of his subordinate assistants, and particularly of his clerks. When the Magistrate himself is but imperfectly acquainted with the laws which he professes to administer, he frequently degenerates into a passive and mischievous instrument in the hands of a rapacious Attorney; or of some discarded underling of the law, with whose assistance he cannot dispense, and at whose enormities he is consequently led to connive. Reprehensible as a Justice of this description must unquestionably be pronounced, his conduct is innocence itself compared with that of the man, if such (*d*) a character

now

(*d*) That such characters were lately in existence within the precincts of the metropolis cannot be doubted. But it is to be hoped that the Police Bill passed in the last Session of Parliament will deliver the City of Westminster from those perverters of justice, who combined with their clerks

432 DUTIES OF JUSTICES OF THE PEACE

now remains in existence, who makes it his object to create business for his own emolument; turns the exercise of his authority into an iniquitous traffic; and prompts, encourages, and shares the extortions and scan-

clerks in joint schemes of plunder and peculation; receives bribes for connivance from the keepers of disorderly houses; and suffered the young offender to proceed unmolested in the career of villany, until encouraged by impunity he committed a crime of such a nature as to secure to the Thief-taker, and of course to the Magistrate his partner, a handsome reward on conviction. From these imputations Justices of the Peace resident in the country are, I believe, in a great measure free. A celebrated modern poet indeed intimates that they are sometimes accessible to baits of another kind.

—————Examine well

His milk-white hand; the palm is hardly clean;
But here and there an ugly smutch appears.
Foh! 'twas a bribe that left it; he has touch'd
Corruption. Whofo seeks an audit here
Propitious, *pays his tribute, game, or fish,*
Wild fowl, or venison, and his errand speeds.

COWPER'S TASK, book iv.

This account, I would hope, is one of those poetical fictions, with which the votaries of the muses delight to embellish their performances. But if the practices here described actually take place, the Magistrate who is a party to them in a single instance ought to be branded with public infamy, and degraded from his office.

daleus

dalous profits of his agents. But the most intelligent and conscientious Magistrate, if he relies with implicit confidence on the good conduct of his clerks, and neglects to keep a watchful eye on them, must be more than commonly fortunate in his choice, if they do not gradually fall into the practice of exacting higher fees than they have a right to (c) demand, and of taking premiums for supposed good offices ; as for promising to procure begging-passes for vagrants, or the next hearing on a busy day for a particular party, or to speak to their superior in favour of a person and his cause ; or at least of making improper advantages of their situation, and rendering the attainment of redress expensive to the poor, by availing themselves of legal forms, and artful subdivisions of judiciary proceedings, needlessly to augment the number of their perquisites. Of this last manœuvre an example frequently occurs in the case of recognizances ; where, if five persons charged

(c) This practice might easily be prevented, were care taken to have a printed copy of the fees allowed to be received hung up, according to Act of Parliament, in a conspicuous part of the office.

On the subject of
the Magistrate himself
shew a very laudable
remitting or purpose
own, where the parties
extraordinary circumstances
distress. To abstain
the common fees of
benevolent Magistrate
desirous of adopting
order justice attainable
and without charge)

(f) In some places the
adopted the plan of giving
enters into a recognizance
filled up, stating the day and
cause of that promised appearance
for the next

be attended with effects beneficial on the whole. The immediate consequence would be an immoderate increase of business to the Magistrate himself; and, what would be still worse, an increase no less immoderate of squabbles and contentions among the poor, who would carry every frivolous dispute, every angry word, to the nearest tribunal, with equal loss of temper and of time; if they knew beforehand that their complaints and invectives might be poured forth, and their resentment eventually gratified, without the payment of a farthing. He who is disinterested enough not to wish to accept even that small compensation for his trouble in administering the laws, or rather that exemption from paying a salary out of his own pocket to his clerk, which the ordinary fees afford, will be likely to appropriate what is saved by receiving them to some charitable and useful purpose; and thus render a much greater service to the Public than he would have done by declining to receive them.

The administration of criminal justice ought to be exempt from the operation of any

bias and influence whatever. It ought not only to be pure, but to be far removed from all suspicion. It ought to hold out no prospects of advantage to Magistrates, nor to those who stand in a near relation to Magistrates. Hence appears the propriety with which Magistrates themselves are prohibited to act as Solicitors or as Counsel in carrying on prosecutions. And hence also appears the blame due to the Magistrate who recommends his own clerk to be employed in carrying them on, even though the recommendation should not be urged, as it sometimes has been urged, in a manner scarcely to be refuted (g).

It remains to illustrate and exemplify some of the preceding general observations, by making a few remarks on the leading branches of business which fall within the jurisdiction of a Justice of the Peace.

One of the most important and laborious functions of the Magistrate is the administra-

(g) A merited and public censure has lately (1797) been passed on practices of this nature by the highest authority in the Court of King's Bench.

tion of the laws respecting the poor. To him it belongs to decide all questions concerning the parochial relief to be assigned to those who are unable to maintain themselves and their families. He will have learnt from experience, on the one hand, that parish-officers are very apt to be penurious and hard-hearted; and on the other, that the poor are sometimes guilty of insolent rudeness and imposition, and unwilling to exert themselves for their subsistence to the utmost of their ability. The avarice and cruelty of the former, and the impertinence, idleness, and extravagance of the latter, he will steadily repress. His solicitude however will not be confined to the discovery of the proper *quantum* of relief: he will be equally anxious to ascertain the best and kindest mode of imparting it; and will study to secure the observance of that mode by positive injunctions, when he is authorised to give them; when not, by his earnest recommendation. In cases in which the law entrusts him with discretionary power, he will not on slight grounds oblige a poor man to relinquish his cottage, with all his little domestic property and comforts, and take up his abode in a

the old and the in-
phans; which, the
management of ar-
ends, too often becom-
aged, and nurseries
will exercise a salutary
as often as may be
to him. And while
and frequently neglect
that all persons in the
labour, shall be furnished
plements, and be constantly
exhort, and if it be necessary
the master to treat all
humanity, and to furnish
quantity of clothing, bread
food. In the appointment

and in all similar transactions in which his popularity, his property, or his convenience may be directly or indirectly interested, let him beware of being partial and selfish. In placing out parish apprentices, let him not, through fear of giving offence to the principal inhabitants by refusing to ratify their bargain, consign the friendless child to an unfeeling

parent at a distance from their own places of settlement, by the parish-officers compelling them to remove thither, sometimes from a private grudge, at other times from an unreasonable or groundless dread of their afterwards becoming chargeable. These evils, which the Magistrate was scarcely perhaps able to prevent, as the law appeared to deny him, in the cases of which we speak, that discretion with which in most others of a similar nature he was invested, were remedied by a recent Act of Parliament with respect to all persons who are regular members of friendly societies; and by a subsequent Act have been remedied with respect to poor persons in general, who are not actually chargeable, and conform to certain prescribed regulations. If there should chance to be any individual precluded by unforeseen circumstances from availing himself of the benefit of the Act, it is the duty of the Magistrate, instead of indiscriminately acting on the application of the officer in a ministerial capacity, to examine into the probability of the man's becoming chargeable to the parish where he resides; and to refuse to authorise the removal in those instances wherein he deems it unnecessary and vexatious, unless clearly obliged by the law.

440 DUTIES OF JUSTICES OF THE PEACE

and profligate master ; nor doom him to a trade which will manifestly be ruinous to his health (i).

Among the contests which will be brought before him instances of disputes between masters and their apprentices or servants will not unfrequently occur. In determining them, let him administer impartial justice ; and in imitation of that Judge to whom he is responsible, be " no respecter of persons." Let him not favour the substantial tradesman against the indigent youth placed under his control ; nor hesitate to rescue the latter from his thralldom, if his master treats him with unmerited rigour, withholds from him the requisite instruction,

(i) In the case of some particular trades and manufactures, which under common management prove injurious to the health and morals of the persons employed in them, Justices of the Peace may sometimes do great service to the community by strongly recommending the adoption of proper rules and precautions, even when the law does not give them the power of enforcing it. The Magistrates for the county of Lancaster assembled at the Michaelmas Sessions, 1844, set a very laudable example of this kind of exertion respecting cotton-mills. See a pamphlet entitled " Thoughts on the Means of preserving the Health of the Poor," by the Rev. Sir William Clarke, Bart. London, 1846.

or exhibits in his conduct a dangerous example of vice. Let him be equally on his guard against being imperceptibly biassed to countenance the wealthy farmer in opposition to his labourers and dependents, at the expence of truth and equity.

The preservation of the public peace falls within the peculiar province of the Justice. On all occasions of tumults and riots, whether actually commenced, or apprehended on probable grounds, let him spare no personal trouble, nor shrink from any personal interference, which may appear likely and necessary to prevent or to quell them. Let him exert himself with impartial diligence and zeal to secure every description of his countrymen from outrage; and if those who are menaced or aggrieved belong to an unpopular party or an obnoxious sect, instead of suffering the illiberal and bigoted prejudices of the neighbourhood to deter him from doing his duty, let him consider them as additional reasons for being strenuous, vigilant, and intrepid in discharging it. Let him always adapt his measures, whether of precaution or of resistance, to the probable
emergency

442 DUTIES OF JUSTICES OF THE PEACE

emergency of the case. Let him be solicitous to put an end to disturbances by the use of those means alone which are commonly employed by the civil power. Let him be tender of calling in the assistance of the soldiery, and still more tender of commissioning them to shed blood. But when all other resources have been exhausted, and the danger continues pressing ; let him not hesitate to maintain the laws of his country, and to protect the persons and property of his fellow subjects, by a cautious application of military force.

It is the duty of a Justice to keep a vigilant eye over the conduct of gaols ; and by an active use of the power which the law entrusts to Magistrates with respect to framing rules for their internal administration; and the employment of the persons confined, and also by occasional visits for the purpose of inspection, to endeavour to ensure proper behaviour on the part both of the gaoler and of the prisoners. The internal proceedings of licensed mad-houses are likewise in a considerable degree subjected to his control, by means of the power which he possesses of directing able physicians

physicians to examine them ; and the trust is not to be neglected.

Another branch of jurisdiction committed to Justices of the Peace is the superintendence of public-houses. By an improper exercise of authority in granting licenses, a Magistrate may do an essential injury to the welfare and morals of the whole community. The principal danger to be feared is from his being misled, by a blind unwillingness to diminish the revenues of the State, by ill-timed tenderness for the Publican or his family, by the solicitations of interested individuals, and even of his own clerks (who, if not bribed to intercede for a license, are entitled to a fee on its being granted), and occasionally perhaps by a secret desire of serving some favourite or dependent of his own, to permit the existence of too many public-houses ; and where the number is moderate, to connive at their being in the hands of improper owners. The evils resulting from a needless abundance of these shops for intemperance and vice (for such they very generally prove, and particularly when they are in the possession of selfish and unprincipled

414 DUTIES OF JUSTICES OF THE PEACE

unprincipled landlords) are beyond description. The lower the rank of the house, and the more obscure its situation is, the greater are the mischiefs which may be expected from it. In these receptacles of the drunken and the dissolute, every kind and degree of profligacy is learnt ; the young and the idle are initiated in sottishness, gaming, profaneness and debauchery ; and confirmed and encouraged by habit and example. Schemes of rapine are projected and planned, from the pilfering of an adjoining hovel, and the petty plunder of an unguarded hen-roost, to highway robbery and midnight murder. Hence private distress and public insecurity ; hence the multitude of our poor, and the fulness of our prisons. Let the Magistrate without delay withdraw his licence from all public-houses conducted in a disorderly manner, or not required by general convenience. Let him resolutely refuse to admit the setting up of a new one, unless a permanent and large accession of inhabitants or of travellers has manifestly rendered additional accommodations necessary. Let him exact every testimonial which the law empowers him to demand, of the fitness of the persons who are

to

to keep ale-houses, and every legal security for the continuance of their good behaviour; and let him beware of trusting to the recommendation of parish-officers and other inhabitants of the place, who frequently strive to obtain a license for the most indigent and worthless characters, to save the village from the charge of maintaining them as paupers. If he finds himself deceived, let him substitute others as speedily as may be in the place of those whom he had appointed, by whatever importunities he may be urged to the contrary. But never let him use his authority to withhold or take away licenses, as an instrument of oppression; to gratify the prejudices of his friends; or to wreak his vengeance on an unfortunate individual, who has offended him at an election, or in some private transaction has incurred his resentment.

In the expediture of county rates, or other public money, on the construction or repair of gaols, bridges, roads, and similar works, let him in each case faithfully and economically apply the sum to its proper object; and in fixing on the persons to execute the plan,

5

never

446 DUTIES OF JUSTICES OF THE PEACE

never let him seek to push forward a favourite workman or superintendent, to the detriment of the public. In the nomination of overseers of highways; in presenting roads out of repair; in deciding on indictments; in directing which roads shall be repaired first; in raising assessments on parishes for the purpose; in exercising the power of punishing or dismissing surveyors for neglect of duty; let him impartially attend to the general benefit of the country.

In the trial of offences against the Excise Laws, the Game Laws, and in a vast variety of other instances, the Magistrate is invested with a power of summary conviction. It is the duty of the Legislature to confer this suspicious and easily abused (4) prerogative with great caution;
it

(4) Sir William Blackstone, speaking of the institution of summary proceedings, observes, that it was "designed
" professedly for the greater ease of the subject, by doing
" him speedy justice; and by not harassing the freeholders
" with frequent and troublesome attendances to try every
" minute offence. But it has of late been so far extended
" as, if a check be not timely given, to threaten the disuse
" of our admirable and truly English trial by Jury, unless
only

it is the duty of the Magistrate to exercise it, when conferred, in the most disinterested and conscientious manner. Let him not seek to conciliate the favour of Government, by distinguishing himself for unrelenting rigour in the chastisement of defrauders of the revenue. Let him not strain the words of an Act of Parliament to a meaning not intended by those who enacted it, in order to facilitate the conviction or add to the punishment of the

"only in capital cases." Vol. iv. p. 280. After stating in strong terms the dangers which might arise to public liberty from entrusting to Commissioners of Excise, Justices of the Peace, and other officers appointed and removeable at pleasure by the Crown, such formidable power over the property of the subject; he particularly enumerates the inconveniences and evils which, in his opinion, have resulted from Justices being now authorized to proceed summarily in a multitude of cases formerly tried by a Jury in the Court Leet. And his conclusion is, that "from these ill consequences we may collect the prudent foresight of our ancient law-givers, who suffered neither the property nor the punishment of the subject to be determined by the opinion of any one or two men; and we may also observe the necessity of not deviating any farther from our ancient Constitution, by ordaining new penalties to be inflicted upon summary convictions." P. 282.—See also further remarks on the same subject, Blackstone, vol. iv. p. 350.

poacher;

448. DUTIES OF JUSTICES OF THE PEACE

poacher; an offender whom Country Gentlemen are disposed to regard with singular abhorrence. Nor ever let him be biased, in his construction of the terms of a statute, to that interpretation which conveys the (1) greater share of power to himself. Such conduct would be no less criminal in him than it would be to excite an opposition, or to concur in petitioning against a Bill pending in Parliament, on account of its lessening in some particular cases the authority which he now possesses; or not granting to him an additional portion adequate to the extent of his desires.

The Justice of the Peace is constituted a guardian in many respects of public morality;

(1) An instance of a strong desire on the part of Magistrates to grasp at exclusive and exorbitant jurisdiction is recorded and stigmatised by Sir William Blackstone. Treating of summary convictions, he observes (vol. iv. p. 283), that "Courts of Common Law have thrown in one check upon them, by making it necessary to *summon* the party accused before he is condemned. This is now held to be an indispensable requisite; though the Justices long struggled the point, forgetting that rule of natural reason expressed by Seneca,

"Qui statuit aliquid, parte inaudita altera,
"Æquum licet statuerit, haud æquus fuit."

and

and is invested with a general power of enforcing the laws against profaneness, the breach of the sabbath, and other offences of the same nature, wherever he witnesses or is properly apprized of their being transgressed. The confidence which the Legislature has evinced, in committing to him this extensive authority, should stimulate him not to neglect the trust. But let him not hope effectually to reform the morals of those whom he corrects, if he exhibits in his own conduct an example of irreligion and vice. Profane language from the mouth of a Magistrate is so flagrant an outrage against the laws of God and man, and so gross a violation of common decency, that it is scarcely possible to censure it with adequate severity.

The conduct of Constables and other inferior Officers of the Police is subject to the inspection of the Justice under whose direction they act; and he is authorized to take fit measures for their punishment, if they neglect their duty. If they disobey the orders which they have received, or disregard those obligations which the nature of their respective functions imposes on them; if they turn

438 DUTIES OF JUSTICES OF THE PEACE

work-house; much less to be transported to the work-house of some distant place, which farms the poor of twenty villages, there to pine among strangers. On the conduct of work-houses in general, those receptacles of the old and the infirm, of widows and orphans; which, though capable under proper management of answering many excellent ends, too often become scenes of misery to the aged, and nurseries of vice to the young; he will exercise a salutary control; and will visit as often as may be expedient such as are near to him. And while he enforces the wise and frequently neglected laws which enact that all persons in the house, who are able to labour, shall be furnished with tools and implements, and be constantly employed; he will exhort, and if it be necessary he will constrain, the master to treat all under his care with humanity, and to furnish all with a sufficient quantity of clothing, bedding, and wholesome food. In the appointment of parochial officers, in the adjudication of cases (b) of settlement, and

(b) Many unnecessary hardships have heretofore been brought upon industrious labourers and artisans resident

and in all similar transactions in which his popularity, his property, or his convenience may be directly or indirectly interested, let him beware of being partial and selfish. In placing out parish apprentices, let him not, through fear of giving offence to the principal inhabitants by refusing to ratify their bargain, consign the friendless child to an unfeeling

parent at a distance from their own places of settlement, by the parish-officers compelling them to remove thither, sometimes from a private grudge, at other times from an unreasonable or groundless dread of their afterwards becoming chargeable. These evils, which the Magistrate was scarcely perhaps able to prevent, as the law appeared to deny him, in the cases of which we speak, that discretion with which in most others of a similar nature he was invested, were remedied by a recent Act of Parliament with respect to all persons who are regular members of friendly societies; and by a subsequent Act have been remedied with respect to poor persons in general, who are not actually chargeable, and conform to certain prescribed regulations. If there should chance to be any individual precluded by unforeseen circumstances from availing himself of the benefit of the Act, it is the duty of the Magistrate, instead of indiscriminately acting on the application of the officer in a ministerial capacity, to examine into the probability of the man's becoming chargeable to the parish where he resides; and to refuse to authorize the removal in those instances wherein he deems it unnecessary and vexatious, unless clearly obliged by the law.

and profligate master ; nor doom him to a trade which will manifestly be ruinous to his health (i).

Among the contests which will be brought before him instances of disputes between masters and their apprentices or servants will not unfrequently occur. In determining them, let him administer impartial justice ; and in imitation of that Judge to whom he is responsible, be “ no respecter of persons.” Let him not favour the substantial tradesman against the indigent youth placed under his control ; nor hesitate to rescue the latter from his thralldom, if his master treats him with unmerited rigour, withholds from him the requisite instruction,

(i) In the case of some particular trades and manufactures, which under common management prove injurious to the health and morals of the persons employed in them, Justices of the Peace may sometimes do great service to the community by strongly recommending the adoption of proper rules and precautions, even when the law does not give them the power of enforcing it. The Magistrates for the county of Lancaster assembled at the Michaelmas Sessions, 1784, set a very laudable example of this kind of exertion respecting cotton-mills. See a pamphlet entitled “ Thoughts on the Means of preserving the Health of the Poor,” by the Rev. Sir William Clerke, Bart. London, 1790.

or exhibits in his conduct a dangerous example of vice. Let him be equally on his guard against being imperceptibly biassed to countenance the wealthy farmer in opposition to his labourers and dependents, at the expence of truth and equity.

The preservation of the public peace falls within the peculiar province of the Justice. On all occasions of tumults and riots, whether actually commenced, or apprehended on probable grounds, let him spare no personal trouble, nor shrink from any personal interference, which may appear likely and necessary to prevent or to quell them. Let him exert himself with impartial diligence and zeal to secure every description of his countrymen from outrage; and if those who are menaced or aggrieved belong to an unpopular party or an obnoxious sect, instead of suffering the illiberal and bigoted prejudices of the neighbourhood to deter him from doing his duty, let him consider them as additional reasons for being strenuous, vigilant, and intrepid in discharging it. Let him always adapt his measures, whether of precaution or of resistance, to the probable emergency

442 DUTIES OF JUSTICES OF THE PEACE

emergency of the case. Let him be solicitous to put an end to disturbances by the use of those means alone which are commonly employed by the civil power. Let him be tender of calling in the assistance of the soldiery, and still more tender of commissioning them to shed blood. But when all other resources have been exhausted, and the danger continues pressing; let him not hesitate to maintain the laws of his country, and to protect the persons and property of his fellow subjects, by a cautious application of military force.

It is the duty of a Justice to keep a vigilant eye over the conduct of gaols; and by an active use of the power which the law entrusts to Magistrates with respect to framing rules for their internal administration; and the employment of the persons confined, and also by occasional visits for the purpose of inspection, to endeavour to ensure proper behaviour on the part both of the gaoler and of the prisoners. The internal proceedings of licensed mad-houses are likewise in a considerable degree subjected to his control, by means of the power which he possesses of directing able physicians

physicians to examine them ; and the trust is not to be neglected.

Another branch of jurisdiction committed to Justices of the Peace is the superintendence of public-houses. By an improper exercise of authority in granting licenses, a Magistrate may do an essential injury to the welfare and morals of the whole community. The principal danger to be feared is from his being misled, by a blind unwillingness to diminish the revenues of the State, by ill-timed tenderness for the Publican or his family, by the solicitations of interested individuals, and even of his own clerks (who, if not bribed to intercede for a license, are entitled to a fee on its being granted), and occasionally perhaps by a secret desire of serving some favourite or dependent of his own, to permit the existence of too many public-houses ; and where the number is moderate, to connive at their being in the hands of improper owners. The evils resulting from a needless abundance of these shops for intemperance and vice (for such they very generally prove, and particularly when they are in the possession of selfish and unprincipled

444 DUTIES OF JUSTICES OF THE PEACE

unprincipled landlords) are beyond description. The lower the rank of the house, and the more obscure its situation is, the greater are the mischiefs which may be expected from it. In these receptacles of the drunken and the dissolute, every kind and degree of profligacy is learnt; the young and the idle are initiated in sottishness, gaming, profaneness and debauchery; and confirmed and encouraged by habit and example. Schemes of rapine are projected and planned, from the pilfering of an adjoining hovel, and the petty plunder of an unguarded hen-roost, to highway robbery and midnight murder. Hence private distress and public insecurity; hence the multitude of our poor, and the fulness of our prisons. Let the Magistrate without delay withdraw his license from all public-houses conducted in a disorderly manner, or not required by general convenience. Let him resolutely refuse to admit the setting up of a new one, unless a permanent and large accession of inhabitants or of travellers has manifestly rendered additional accommodations necessary. Let him exact every testimonial which the law empowers him to demand, of the fitness of the persons who are
to

to keep ale-houses, and every legal security for the continuance of their good behaviour ; and let him beware of trusting to the recommendation of parish-officers and other inhabitants of the place, who frequently strive to obtain a license for the most indigent and worthless characters, to save the village from the charge of maintaining them as paupers. If he finds himself deceived, let him substitute others as speedily as may be in the place of those whom he had appointed, by whatever importunities he may be urged to the contrary. But never let him use his authority to withhold or take away licenses, as an instrument of oppression ; to gratify the prejudices of his friends ; or to wreak his vengeance on an unfortunate individual, who has offended him at an election, or in some private transaction has incurred his resentment.

In the expediture of county rates, or other public money, on the construction or repair of gaols, bridges, roads, and similar works, let him in each case faithfully and economically apply the sum to its proper object ; and in fixing on the persons to execute the plan,

never

§

446 DUTIES OF JUSTICES OF THE PEACE

never let him seek to push forward a favourite workman or superintendent, to the detriment of the public. In the nomination of overseers of highways; in presenting roads out of repair; in deciding on indictments; in directing which roads shall be repaired first; in raising assessments on parishes for the purpose; in exercising the power of punishing or dismissing surveyors for neglect of duty; let him impartially attend to the general benefit of the country.

In the trial of offences against the Excise Laws, the Game Laws, and in a vast variety of other instances, the Magistrate is invested with a power of summary conviction. It is the duty of the Legislature to confer this suspicious and easily abused (k) prerogative with great caution; it

(k) Sir William Blackstone, speaking of the institution of summary proceedings, observes, that it was “designed
“professedly for the greater ease of the subject, by doing
“him speedy justice; and by not harassing the freeholders
“with frequent and troublesome attendances to try every
“minute offence. But it has of late been so far extended
“as, if a check be not timely given, to threaten the disuse
“of our admirable and truly English trial by Jury, unless
only

it is the duty of the Magistrate to exercise it, when conferred, in the most disinterested and conscientious manner. Let him not seek to conciliate the favour of Government, by distinguishing himself for unrelenting rigour in the chastisement of defrauders of the revenue. Let him not strain the words of an Act of Parliament to a meaning not intended by those who enacted it, in order to facilitate the conviction or add to the punishment of the

“only in capital cases.” Vol. iv. p. 280. After stating in strong terms the dangers which might arise to public liberty from entrusting to Commissioners of Excise, Justices of the Peace, and other officers appointed and removeable at pleasure by the Crown, such formidable power over the property of the subject; he particularly enumerates the inconveniences and evils which, in his opinion, have resulted from Justices being now authorized to proceed summarily in a multitude of cases formerly tried by a Jury in the Court Leet. And his conclusion is, that “from these
“ill consequences we may collect the prudent foresight of
“our ancient law-givers, who suffered neither the property
“nor the punishment of the subject to be determined by
“the opinion of any one or two men; and we may also
“observe the necessity of not deviating any farther from
“our ancient Constitution, by ordaining new penalties to
“be inflicted upon summary convictions.” P. 282.—See also further remarks on the same subject, Blackstone, vol. iv. p. 350.

poacher ;

442 DUTIES OF JUSTICES OF THE PEACE

poacher; an offender whom Country Gentlemen are disposed to regard with singular abhorrence. Nor even let him be blinded, in his construction of the terms of a statute, to that interpretation which conveys the (1) greatest share of power to himself. Such conduct would be no less criminal in him than it would be to excite an opposition, or to concert in petitioning against a Bill pending in Parliament, on account of its lessening in some particular cases the authority which he now possesses; or not granting to him an additional portion adequate to the extent of his desires.

The Justice of the Peace is constituted a guardian in many respects of public morality;

(1) An instance of a strong desire on the part of Magistrates to grasp at exclusive and exorbitant jurisdiction is recorded and stigmatised by Sir William Blackstone. Treating of summary convictions, he observes (vol. iv. p. 283), that " Courts of Common Law have thrown in one check " upon them, by making it necessary to *summon* the party " accused before he is condemned. This is now held to " be an indispensable requisite; though the Justices long " struggled the point, forgetting that rule of natural reason expressed by Seneca,

" Qui statuit aliquid, parte inaudita altera,
" Æquum licet statuerit, haud æquus fuit."

and

and is invested with a general power of enforcing the laws against profaneness, the breach of the sabbath, and other offences of the same nature, wherever he witnesses or is properly apprized of their being transgressed. The confidence which the Legislature has evinced, in committing to him this extensive authority, should stimulate him not to neglect the trust. But let him not hope effectually to reform the morals of those whom he corrects, if he exhibits in his own conduct an example of irreligion and vice. Profane language from the mouth of a Magistrate is so flagrant an outrage against the laws of God and man, and so gross a violation of common decency, that it is scarcely possible to censure it with adequate severity.

The conduct of Constables and other inferior Officers of the Police is subject to the inspection of the Justice under whose direction they act; and he is authorized to take fit measures for their punishment, if they neglect their duty. If they disobey the orders which they have received, or disregard those obligations which the nature of their respective functions imposes on them; if they turn

450 DUTIES OF JUSTICES OF THE PEACE

loose on the public, vagrants whom they have been enjoined to forward to their places of settlement ; if they omit to take proper precautions when they have reason to apprehend disturbances and riots, or strenuously to exert themselves when tumults actually arise ; if they wilfully permit the escape of persons accused, or connive at the impositions of traders who make use of fraudulent weights and measures ; on these and all other similar occasions the Magistrate himself becomes an accomplice in the crime, and an abettor of the injury which the public may receive from future repetitions of it, if he forbears to chastise the guilty.

In some instances the concurrence of two Justices is necessary to give validity to the measures which are to be carried into execution. Hence Magistrates frequently institute the practice of meeting each other once in a week, or at other periodical intervals, at an appointed place, where cases of all kinds are brought before them from every part of the neighbourhood. They are thus enabled to transact a great quantity of business with the
smallest

smallest possible expenditure of time (*m*) to themselves. A Magistrate is much to be blamed, where, to the manifest inconvenience not of himself merely, but of the country, he refuses to adopt this mode of co-operating with one of his brethren from political or personal prejudice. And he is still more reprehensible if, after having adopted it, he is seduced by timidity or interested views to acquiesce in any improper conduct on the part of his co-adjutor (*n*).

At

(*m*) A Magistrate may reap similar advantages by having fixed hours for doing business at home. This practice also saves trouble, in many cases, to those who are obliged to attend him; and enables parish officers to receive at one time the decision of the Magistrate on many applications for relief, &c. each of which might otherwise have occasioned them a separate attendance.

(*n*) It may not be useless to subjoin by way of example the following "Plan of Arrangement for the Magistracy of the Division of Manchester in the County Palatine of Lancaster, agreed upon by the undersigned Magistrates, January 21st, 1795," as it contains various beneficial provisions in a very small compass.

"I. A Plan of Rotation shall be fixed on the basis of certainty and mutual accommodation for all single and double attendances at the New Bayley Court-House, for visiting the Gaol, and auditing the accounts thereof; for the frequent inspection of the Poor-

452 DUTIES OF JUSTICES OF THE PEACE

At the Court of Quarter Sessions all the Justices of the Peace for the county assemble in a judicial character, and with very extensive powers. A part of their business consists in deciding on appeals from the sentences of individual Magistrates. In reviewing those sentences, each Justice is bound in conscience to act with impartial equity; and never to screen a faulty determination of one of his brethren for

" Houses; for the care and inspection of the public
" Bridges, and of the Bridgemasters' accounts, and of the
" Highways; for enquiring into the state of the Public
" Houses, &c. &c.; so that for each of these various services, so divided, there may always be certainty of attendance, and a fixed point of responsibility.

" II. None of the Magistrates shall receive, directly or indirectly, for their own use or benefit, any of the fees or perquisites belonging to their office.

" III. All business requiring the attendance of two or more Justices shall be transacted on days to be appointed at the New Bayley Court-House, and at no other place within the above Division.

" IV. The Clerks shall be in common, and divide the fees in the proportion of the number of Magistrates by whom they are respectively appointed. They shall not act as Advocates or Solicitors in any matter brought before the Magistrates. They shall keep exact registers of all warrants and summonses issued, of orders made, of parish apprentices' indentures, &c. &c.

" V. Other

for the sake of acquaintance or friendship, much less from a dishonourable wish to purchase indemnity for misconduct of his own. A further commission with which they are entrusted is that of trying criminals of various descriptions. In this capacity they exercise functions analogous to those of the Judges of the Assize; and many of the observations made in a former chapter on the Duties of the Judges of the Supreme Courts of Law are equally applicable to the conduct of Justices at the Sessions. To those observations the reader is referred. It remains only to add on this head, that although the sentences passed on

“ V. Other inferior regulations, not inconsistent with
 “ the above, may be added from time to time, after a fortnight’s notice given to each Magistrate, by a majority
 “ of those who shall attend the meeting appointed to determine the same.

“ Signed T. B. BAYLEY,

“ PETER DRINKWATER,

“ JOHN LEAF,

“ W. BROOME,

“ T. RICHARDSON,

“ JOHN SIMPSON.”

From the Regulations adopted by Magistrates in different parts of the kingdom other excellent examples might have been selected, had more than one been necessary.

454 DUTIES OF JUSTICES OF THE PEACE

criminals at the Sessions are found by experience to be more rigorous on the whole than those which are pronounced at the Assizes; this circumstance affords no grounds for imputing to the Justices too great severity. They are in many instances well acquainted with the previous bad characters of the culprits tried by them; who are in common inhabitants of their own neighbourhood, and may have already appeared before their tribunal. And many persons who ought to have been sent to the Assizes to be capitally indicted, are tried at the Sessions; the prosecutors being aware that the latter mode is attended with less expence and loss of time than the former, and wishing for nothing more than the transportation of the offender. In both these cases the Justices, if they find themselves invested by the laws with a latitude in punishing, are naturally and properly led to prefer the more considerable chastisement.

II. The other subordinate Magistrates, of whom it was proposed to treat, may be comprehended under the general description of Municipal Officers.

It

It would be altogether foreign to the purpose of this work, and not very conducive to utility, to enter into minute disquisitions concerning the several duties of Mayors, High Bailiffs, Aldermen, and other Magistrates of particular corporations ; duties which depend on the various functions and privileges conferred upon the individuals by the domestic constitution of their respective franchises. I shall therefore confine myself to a few short remarks on the obligations which are incumbent on Municipal Officers in general. And even these remarks will be comprized within a much narrower compass than they might otherwise have occupied, in consequence of the preceding enquiry into the office of Justices of the Peace. For many of the persons now under consideration are themselves invested with the office and powers of Justices, by virtue of the situations which they occupy, especially if they are in posts of weight and pre-eminence in the body corporate to which they belong ; and consequently the former part of this chapter may be regarded as immediately addressed to them. On their conduct therefore in the administration of the laws within

their district it is needless to enlarge. It may be right however to observe on the subject of their proceedings respecting the poor, that in great towns, and particularly in manufacturing towns, much imposition on the public and more distress among the indigent might be prevented, were the place divided into a sufficiently large number of districts, each under its own overseer; and were the overseer obliged, on entering into office, to visit all the poor families under his cognizance, and to

make out and deliver to the Magistrates a list of every family, specifying the sex, the age, the employment, and the probable earnings of each individual. These data would enable the Magistrates, on subsequent applications for relief, to ascertain the cause of the necessity, and the due quantum of assistance, much more easily and satisfactorily than can generally be the case where similar measures are not adopted. And it may not be superfluous to add an express caution to the members of corporations in small towns, most of whom commonly are either shop-keepers or men engaged in mechanical trades, against being deterred from an honest and impartial discharge
of

of their duty by a fear of (o) diminishing the sale of the articles in which they deal ; of losing the custom of some of their townsmen, or of experiencing in other ways the effects of their displeasure.

Corporations possess almost universally the right of filling up all vacancies in their own body, by raising subordinate members to a higher class, and by electing private individuals to supply the place of those promoted. They frequently enjoy estates of considerable

(o) The following circumstances are stated on good authority to have occurred very lately in a large town in the middle of the kingdom. The great quantity of public-houses in the place, and the shameful proceedings of many, were matters of general notoriety. The Judges at the Assizes recommended a diminution of the number licensed ; the Corporation assembled to effect it ; the propriety of the measure was obvious ; and a large reduction was expected. But several of the Aldermen and their friends dealt in malt ; and by one or other of them almost all the obnoxious landlords were supplied with that article. Each of these landlords was in consequence rescued from danger by the influence of his patron ; and none were deprived of their licenses, except one or two who had been indiscreet enough to employ maltsters unconnected with the Corporation.

value,

458 DUTIES OF JUSTICES OF THE PEACE

value, with ample discretionary power as to the application of the income, and in some places with an almost unlimited right of applying it to such purposes as they shall think fit. They are also commonly entitled to the receipt of tolls and other incidental branches of revenue ; and often have the management of local trusts and charities of various descriptions. They have likewise in many boroughs the power of conferring on any person whatever, either by sale or by donation, the right of voting for Members of Parliament. Of all these sources of emolument and power, an interested, arbitrary, and oppressive use is frequently made. Neither this general remark, nor the short illustrations of it which will be subjoined, are intended to throw indiscriminate censure on all corporations ; but they are designed to warn each member of a body corporate, especially in a small borough, against those temptations by which he may not improbably be assailed, and by which many of his brethren in different parts of the kingdom are scandalously seduced. These men, sacrificing the public good to their own selfish views, cast their eyes on some man of property in the neighbour-

neighbourhood, and sell to him the influence which they possess over their colleagues and the inhabitants of the town, sometimes for fair and specious words, for promises of future favours, and one or two annual dinners; but not unfrequently for a more solid and barefaced bribe. For the stipulated aid of their patron in procuring for them little places under Government, and for the certainty of an ample sum to be paid in hand at every recurrence of an election; they engage in return that the great man himself, or any of his cousins or dependents whom he may condescend to nominate, shall be the freely chosen representative of the borough. With indefatigable perseverance they exert every practicable mode of augmenting their own power, that their services may be more valuable, and be purchased at a higher rate. They share part of the rewards of their venality among their most active assistants; and strive to draw into acquiescence, by flattery and delusion, those men of weight in the town who are not to be bought, and are perhaps but imperfectly acquainted with the selfish schemes privately going on, or are disposed by the quietness of
their

460 DUTIES OF JUSTICES OF THE PEACE

their dispositions to prefer passiveness under almost any circumstance to the bustle of contest. The substantial inhabitant who is not of their (*p*) party is proscribed from all chance of obtaining a seat in the Council of Regency of the place. Every poor man who hesitates to surrender his vote to their disposal, or who has not a vote to surrender, is debarred from partaking of a dole, from turning his cow into the common pasture, from getting his child into a charity school, or his aged parent into an alms-house. If the strength of the refractory electors still continues formidable, they overpower it by creating a swarm of new and trusty voters ; men whose faces are unknown in the borough when they come to receive the freedom of it, and are never seen afterwards within its precincts except on the day of poll. It is to the infamous conduct of servile and interested Corporations that we may trace almost every just complaint, which

(*p*) In some towns a difference in religious persuasion is a sufficient reason for opposing the admission of any person of the sect to office or emolument. Religious bigotry has a share in these proceedings ; but in most cases they principally arise from political contests actually existing in the place, or not yet forgotten.

has

has been alleged against the existing state of popular representation in the House of Commons.

The regulation of the police of the town, the removal of nuisances, the superintendence of markets, and other matters of the same nature, fall within the province of the Corporation ; and each member is bound in conscience to perform his part of the general duty, and cheerfully as well as conscientiously to give up for the public good a due portion of his time, however valuable it may be to him. In points which relate to the traffic of the place, the body corporate may frequently render material benefit both to the town and to the community, by a judicious relaxation of ancient privileges and exclusive rights, which, however useful they may have been at their first institution, are now become injurious and absurd ; and by a liberal relinquishment of petty tolls, which create many obstructions and embarrassments to internal trade, without producing any considerable revenue.

24
1

1



